

1 insurance, a reasonable margin for underwriting expenses, profits, contingencies  
 2 and other reasonable costs and expenses attributable to the insurer, and costs and  
 3 compensation to the creditor for providing and servicing the insurance, plus the  
 4 premium taxes payable on the insurance.

5 ➔Section 1304. KRS 304.19-090 is amended to read as follows:

6 (1) Any insurer may revise its schedules of premium rates from time to time, and shall  
 7 file such revised schedules with the commissioner~~executive director~~. No insurer  
 8 shall issue any credit life insurance or credit health insurance policy for which the  
 9 premium rate exceeds that determined by the schedules of such insurer as then on  
 10 file with the commissioner~~executive director~~.

11 (2) Each individual policy or group certificate shall provide that in the event of  
 12 termination of the insurance prior to the scheduled maturity date of the  
 13 indebtedness, any refund of an amount paid by the debtor for insurance shall be paid  
 14 or credited promptly to the person entitled thereto. The commissioner~~executive~~  
 15 ~~director~~ shall prescribe a minimum refund and no refund which would be less than  
 16 such minimum need be made. The formula to be used in computing such refund  
 17 shall be filed with and approved by the commissioner~~executive director~~. Nothing  
 18 contained in this section shall require the debtor to surrender any policy or group  
 19 certificate for cancellation or termination solely because the indebtedness has been  
 20 paid in full prior to the scheduled maturity date nor require the insurer to return any  
 21 premiums.

22 (3) When a debtor purchases credit life insurance or credit health insurance and an  
 23 individual policy or group certificate of insurance is not issued, the creditor shall  
 24 immediately give written notice to such debtor and shall promptly make an  
 25 appropriate credit to the account.

26 (4) The amount charged to a debtor for any credit life insurance or credit health  
 27 insurance shall not exceed the premiums charged by the insurer, as computed at the

1 time the charge to the debtor is determined.

2 (5) Nothing in this subtitle shall be construed to authorize any payments for insurance  
3 now prohibited under any statute, or rule thereunder, governing credit transactions.

4 ➔Section 1305. KRS 304.19-100 is amended to read as follows:

5 All policies of credit life insurance and credit health insurance shall be delivered or issued  
6 for delivery in this state only by an insurer authorized to do an insurance business herein,  
7 and shall be issued only through holders of licenses, or authorization issued by the  
8 commissioner~~[executive director]~~.

9 ➔Section 1306. KRS 304.19-130 is amended to read as follows:

10 Whenever the commissioner~~[executive director]~~ finds that there has been a violation of  
11 this subtitle or any administrative regulations promulgated pursuant thereto, the  
12 commissioner~~[he]~~ shall conduct a hearing in accordance with this chapter and KRS  
13 Chapter 13B.

14 ➔Section 1307. KRS 304.20-020 is amended to read as follows:

15 (1) No automobile liability or motor vehicle liability policy of insurance insuring  
16 against loss resulting from liability imposed by law for bodily injury or death  
17 suffered by any person arising out of the ownership, maintenance or use of a motor  
18 vehicle shall be delivered or issued for delivery in this state with respect to any  
19 motor vehicle registered or principally garaged in this state unless coverage is  
20 provided therein or supplemental thereto, in limits for bodily injury or death set  
21 forth in KRS 304.39-110 under provisions approved by the  
22 commissioner~~[executive director]~~, for the protection of persons insured thereunder  
23 who are legally entitled to recover damages from owners or operators of uninsured  
24 motor vehicles because of bodily injury, sickness or disease, including death,  
25 resulting therefrom; provided that the named insured shall have the right to reject in  
26 writing such coverage; and provided further that, unless the named insured requests  
27 such coverage in writing, such coverage need not be provided in or supplemental to

1 a renewal policy where the named insured had rejected the coverage in connection  
2 with a policy previously issued to him or her by the same insurer.

3 (2) For the purpose of this coverage the term "uninsured motor vehicle" shall, subject to  
4 the terms and conditions of such coverage, be deemed to include an insured motor  
5 vehicle where the liability insurer thereof is unable to make payment with respect to  
6 the legal liability of its insured within the limits specified therein because of  
7 insolvency; an insured motor vehicle with respect to which the amounts provided,  
8 under the bodily injury liability bond or insurance policy applicable at the time of  
9 the accident with respect to any person or organization legally responsible for the  
10 use of such motor vehicle, are less than the limits described in KRS 304.39-110;  
11 and an insured motor vehicle to the extent that the amounts provided in the liability  
12 coverage applicable at the time of the accident is denied by the insurer writing the  
13 same.

14 (3) Protection against an insurer's insolvency shall be applicable only to accidents  
15 occurring during a policy period in which its insured's uninsured motorist coverage  
16 is in effect where the liability insurer of the tortfeasor becomes insolvent within one  
17 (1) year after such an accident. Nothing herein contained shall be construed to  
18 prevent any insurer from affording insolvency protection under terms and  
19 conditions more favorable to its insureds than is provided hereunder.

20 (4) In the event of payment to any person under the coverage required by this section  
21 and subject to the terms and conditions of such coverage, the insurer making such  
22 payment shall, to the extent thereof, be entitled to the proceeds of any settlement or  
23 judgment resulting from the exercise of any rights of recovery of such person  
24 against any person or organization legally responsible for the bodily injury for  
25 which such payment is made, including the proceeds recoverable from the assets of  
26 the insolvent insurer.

27 ➔Section 1308. KRS 304.20-040 is amended to read as follows:

1 (1) As used in this section:

2 (a) "Policy" means an automobile liability insurance policy, delivered or issued  
3 for delivery in this state, insuring a single individual or husband and wife  
4 resident of the same household, as named insured, and under which the  
5 insured vehicles therein designated are of the following types only:

6 1. A motor vehicle of the private passenger or station wagon type that is  
7 not used as a public or livery conveyance for passengers, nor rented to  
8 others;

9 2. Any other four-wheel motor vehicle with a load capacity of one  
10 thousand five hundred (1,500) pounds or less which is not used in the  
11 occupation, profession, or business of the insured; provided, however,  
12 that this section shall not apply:

13 a. To any policy issued under an automobile assigned risk plan;  
14 b. To any policy insuring more than four (4) automobiles; or  
15 c. To any policy covering garage, automobile sales agency, repair  
16 shop, service station, or public parking place operation hazards;

17 (b) "Automobile liability insurance policy" includes only coverage for bodily  
18 injury and property damage liability, basic reparations benefits, and the  
19 provisions therein, if any, relating to medical payments, uninsured motorists  
20 coverage, underinsured motorists coverage, and automobile physical damage  
21 coverage;

22 (c) "Renewal" or "to renew" means the issuance and delivery by an insurer of a  
23 policy replacing at the end of the policy period a policy previously issued and  
24 delivered by the same insurer, or the issuance and delivery of a certificate or  
25 notice extending the term of a policy beyond its policy period or term;  
26 provided, however, that any policy with a policy period or term of less than  
27 three (3) months shall for the purpose of this section be considered as if



1 written for a policy period or term of three (3) months. Provided, further, that  
 2 any policy written for a term longer than one (1) year or any policy with no  
 3 fixed expiration date, shall for the purpose of this section, be considered as if  
 4 written for successive policy periods or terms of one (1) year, and the policy  
 5 may be terminated at the expiration of any annual period upon giving seventy-  
 6 five (75) days' notice of nonrenewal prior to the anniversary date;

7 (d) "Nonpayment of premium" means failure of the named insured to discharge  
 8 when due any of his or her obligations in connection with the payment of  
 9 premiums on a policy, or any installment of the premium, whether the  
 10 premium is payable directly to the insurer or its agent or indirectly under any  
 11 premium finance plan or extension of credit;

12 (e) "Declination" or "decline" means either the refusal of an insurer to issue an  
 13 automobile liability insurance policy upon receipt of a written nonbinding  
 14 application or written request for coverage from its agent or an applicant, or  
 15 refusal of an agent to transmit to an insurer a written nonbinding application  
 16 or written request for coverage received from an applicant. The offering of  
 17 insurance coverage with a company within an insurance group that is different  
 18 from the company requested on the nonbinding application or written request  
 19 for coverage, or the offering of insurance upon different terms than requested  
 20 in the nonbinding application or written request for coverage, shall be  
 21 considered to be a declination; and

22 (f) "Agent" includes, but is not limited to, surplus lines broker.

23 (2) (a) A notice of cancellation of a policy shall be effective only if it is based on one  
 24 (1) or more of the following reasons:

- 25 1. Nonpayment of premium;
- 26 2. The driver's license or motor vehicle registration of the named insured or  
 27 of any other operator who either resides in the same household or

1 customarily operates an automobile insured under the policy has been  
 2 under suspension or revocation during the policy period or, if the policy  
 3 is a renewal, during its policy period or the one hundred eighty (180)  
 4 days immediately preceding its effective date;

5 3. Discovery of fraud or material misrepresentation made by or with the  
 6 knowledge of the named insured in obtaining the policy, continuing the  
 7 policy, or in presenting a claim under the policy;

8 4. Discovery of willful acts or omissions on the part of the named insured  
 9 that increase any hazard insured against; or

10 5. A determination by the commissioner~~[executive director]~~ that the  
 11 continuation of the policy would place the insurer in violation of this  
 12 chapter or the rules or administrative regulations of the  
 13 commissioner~~[executive director]~~.

14 (b) This subsection shall not apply to any policy or coverage which has been in  
 15 effect less than sixty (60) days at the time notice of cancellation is mailed or  
 16 delivered by the insurer unless it is a renewal policy.

17 (c) Modification of automobile physical damage coverage by the inclusion of a  
 18 deductible not exceeding one hundred dollars (\$100) shall not be deemed a  
 19 cancellation of the coverage or of the policy.

20 (d) This subsection shall not apply to nonrenewal.

21 (3) No notice of cancellation of a policy to which subsection (2) of this section applies  
 22 shall be effective unless mailed or delivered by the insurer to the named insured at  
 23 least twenty (20) days prior to the effective date of cancellation; provided, however,  
 24 that where cancellation is for nonpayment of premium, at least fourteen (14) days'  
 25 notice of cancellation accompanied by the reason therefor shall be given. This  
 26 subsection shall not apply to renewals.

27 (4) No insurer or agent shall decline, refuse to renew, or cancel a policy of automobile

1 insurance solely because:

2 (a) Of the credit history, or lack of credit history, of the applicant or insured;

3 (b) The applicant or insured has previously obtained automobile coverage through  
4 a residual market mechanism or from a carrier providing nonstandard  
5 coverage;

6 (c) The applicant or insured has sustained one (1) or more losses that immediately  
7 result from a natural cause without the intervention of any person and that  
8 could not have been prevented by the exercise of prudence, diligence, and  
9 care;

10 (d) Of the race, religion, nationality, ethnic group, age, sex, or marital status of  
11 the applicant or named insured; or

12 (e) Another insurer previously declined to insure the applicant or terminated an  
13 existing policy in which the applicant was the named insured.

14 (5) No insurer shall fail to renew a policy unless it shall mail or deliver to the named  
15 insured, at the address shown in the policy, at least seventy-five (75) days' advance  
16 notice of its intention not to renew. If notice is not provided, coverage shall be  
17 deemed to be renewed for the ensuing policy period upon payment of the  
18 appropriate payment under the same terms and conditions, until the named insured  
19 has accepted replacement coverage with another insurer, or until the named insured  
20 has agreed to the nonrenewal.

21 (6) The transfer of a policyholder between companies within the same insurance group  
22 shall be considered a nonrenewal.

23 (7) Renewal of a policy shall not constitute a waiver or estoppel with respect to grounds  
24 for cancellation which existed before the effective date of the renewal.

25 (8) If the insurer has manifested its willingness to renew by mailing or delivering a  
26 renewal notice, bill, certificate, or policy to the first-named insured at his or her last  
27 known address at least thirty (30) days before the end of the current policy period

1 with the amount of the renewal premium charge and its due date clearly set forth  
 2 therein, then the policy shall expire and terminate without further notice to the  
 3 insured on the due date, unless the renewal premium is received by the insurer or its  
 4 authorized agent on or before that date. When any policy terminates pursuant to this  
 5 subsection because the renewal premium was not received on or before the due  
 6 date, the insurer shall, within fifteen (15) days, deliver or mail to the first-named  
 7 insured at his or her last known address a notice that the policy was not renewed  
 8 and the date on which the coverage under it ceased to exist.

9 (9) (a) Proof of mailing of renewal premium to the insurer or its agent, when  
 10 authorized, on or before the due date, shall constitute a presumption of receipt  
 11 pursuant to subsection (8) of this section.

12 (b) Proof of mailing of notice of cancellation or of intention not to renew or of  
 13 reasons for cancellation or nonrenewal to the named insured at the address  
 14 shown in the policy shall be sufficient proof of notice.

15 (10) No insurer shall impose or request an additional premium higher than its standard  
 16 premium for automobile insurance, cancel or refuse to issue a policy, or refuse to  
 17 renew a policy solely because the insured or the applicant is an individual with a  
 18 disability, so long as the disability does not substantially impair the person's  
 19 mechanically assisted driving ability.

20 (11) When an automobile liability insurance policy is canceled other than for  
 21 nonpayment of premium, or in the event of failure to renew a policy of automobile  
 22 liability insurance, the insurer shall notify the named insured of his or her possible  
 23 eligibility for automobile liability insurance coverage through the Kentucky  
 24 automobile assigned risk plan. The notice shall accompany or be included in the  
 25 notice of cancellation or the notice of intent not to renew. The notice shall also  
 26 inform the insured that he or she may, within seven (7) days, request the  
 27 commissioner~~[executive director]~~ in writing to determine whether there is sufficient

1 reason to cancel or not to renew the policy. Within fourteen (14) days of receiving  
 2 such a written request, the commissioner~~[executive-director]~~ shall send his or her  
 3 findings to the insurer and to the insured. When he or she sends [his] findings, the  
 4 commissioner~~[executive-director]~~ shall notify both parties of their right to request a  
 5 hearing under KRS 304.2-310(2)(b) and KRS Chapter 13B. The party requesting  
 6 the hearing shall give the commissioner~~[executive-director]~~ written confirmation of  
 7 attendance at the hearing not more than five (5) days before, nor less than forty-  
 8 eight (48) hours before, the scheduled hearing. If the requesting party fails to give  
 9 the required written confirmation, the commissioner~~[executive-director]~~ shall  
 10 cancel the hearing.

11 (12) The reason for nonrenewal or cancellation shall accompany or be included in the  
 12 notice of nonrenewal or cancellation.

13 (13) Except where the maximum limits of coverage have been purchased, every notice of  
 14 first renewal shall include a provision or be accompanied by a notice stating in  
 15 substance that added uninsured motorists, underinsured motorists, and personal  
 16 injury protection coverages may be purchased by the insured.

17 (14) There shall be no liability on the part of and no cause of action of any nature shall  
 18 arise against the commissioner~~[executive-director]~~ or against any insurer, its  
 19 authorized representative, its agents, its employees, or any firm, person, or  
 20 corporation furnishing to the insurer information as to reasons for cancellation or  
 21 nonrenewal, for any statement made by any of them in any written notice of  
 22 cancellation or nonrenewal, or in any other communication, oral or written,  
 23 specifying the reasons for cancellation or nonrenewal, or the providing of  
 24 information pertaining thereto, or for statements made or evidence submitted at any  
 25 hearings conducted in connection therewith.

26 (15) (a) If the commissioner~~[executive-director]~~ determines that an insurer has  
 27 violated any provision of this section, the commissioner~~[executive-director]~~

1 may require the insurer to:

- 2 1. Accept the application or written request for insurance coverage at a rate
- 3 and on the same terms and conditions as are available to other risks
- 4 similarly situated;
- 5 2. Reinstate insurance coverage to the end of the policy period; or
- 6 3. Continue insurance coverage at a rate and on the same terms and
- 7 conditions as are available to other risks similarly situated.

8 (b) As to any person who has violated any provisions of this section, the

9 commissioner~~[executive director]~~ may:

- 10 1. Issue a cease and desist order to restrain the person from engaging in
- 11 practices that violate this section;
- 12 2. Suspend or revoke the person's license or certificate of authority;
- 13 3. Assess a civil penalty against the person in accordance with KRS
- 14 304.99-020; or
- 15 4. Take any combination of the actions specified in this paragraph.

16 ➔Section 1309. KRS 304.20-045 is amended to read as follows:

- 17 (1) No insurer shall increase the premium on an automobile liability insurance policy
- 18 solely as a result of a claim for an automobile accident filed by an insured if the
- 19 insured was not at fault nor contributorily negligent.
- 20 (2) An insured may notify in writing the commissioner~~[executive director of insurance]~~
- 21 if the insured believes that an insurer has increased his or her premium in violation
- 22 of subsection (1) of this section. The commissioner~~[executive director]~~ shall
- 23 investigate the complaint, take appropriate action, and send written notice of his or
- 24 her actions to the insured.

25 ➔Section 1310. KRS 304.20-080 is amended to read as follows:

26 Any public housing authority created pursuant to KRS Chapter 80 may self-insure,

27 subject to approval of the commissioner~~[executive director]~~ by filing with the

1 commissioner~~[executive director]~~ in satisfactory form:

- 2 (1) A continuing undertaking by the owner or other appropriate person to pay tort
- 3 liabilities;
- 4 (2) Evidence that appropriate provision exists for prompt and efficient administration
- 5 of all claims; and
- 6 (3) Evidence that reliable financial arrangements, deposits, or commitments exist
- 7 providing coverage substantially equivalent to that afforded by a policy of insurance
- 8 for payment of claims against a public housing authority.

9 ➔ Section 1311. KRS 304.20-090 is amended to read as follows:

10 Any insurer providing workers' compensation insurance coverage for a Kentucky location  
11 shall provide proof of coverage to the commissioner~~[executive director]~~ of the  
12 Department~~[Office]~~ of Workers' Claims in the ~~[Department of]~~ Labor Cabinet in  
13 accordance with the requirements of the chapter.

14 ➔ Section 1312. KRS 304.20-150 is amended to read as follows:

- 15 (1) As used in KRS 304.20-160 to 304.20-190, "authorized agencies" shall mean:
- 16 (a) State commissioner~~[executive director]~~ of insurance;
- 17 (b) The state fire marshal when authorized or charged with the investigation of
- 18 fires at the place where the fire actually took place;
- 19 (c) The state Attorney General when authorized or charged with the investigation
- 20 of fires at the place where the fire actually took place;
- 21 (d) The commissioner of the Department of Kentucky State Police;
- 22 (e) The full-time Commonwealth's or county attorney responsible for
- 23 prosecutions in the county where the fire occurred;
- 24 (f) The Federal Bureau of Investigation or any other federal agency having the
- 25 authority to investigate federal offenses arising from arson; and
- 26 (g) Any United States' attorney's office authorized or charged with investigation
- 27 or prosecution of the fire in question or the violation of any statute arising

1 from said fire.

2 (2) As used in KRS 304.20-160 to 304.20-190, "relevant" means information having  
3 any tendency to make the existence of any fact that is of consequence to the  
4 investigation or determination of the issue more probable or less probable than it  
5 would be without the evidence.

6 (3) For the purposes of KRS 304.20-160 to 304.20-190, information will be "deemed  
7 important" if such information is requested by an authorized agency.

8 (4) "Insurer," as used in KRS 304.20-160 to 304.20-190, shall be defined in the same  
9 manner as it is defined in KRS 304.1-040, and shall include the Kentucky FAIR  
10 plan and reinsurance association, and all authorized persons acting on behalf of an  
11 insurer.

12 ➔Section 1313. KRS 304.20-330 is amended to read as follows:

13 After coverage has been in effect more than sixty (60) days or after the effective date of a  
14 renewal policy a notice of cancellation shall not be issued unless it is based on at least one  
15 (1) of the following reasons:

16 (1) Nonpayment of premium;

17 (2) Discovery of fraud or material misrepresentation made by or with the knowledge of  
18 the named insured in obtaining the policy, continuing the policy, or in presenting a  
19 claim under the policy;

20 (3) Discovery of willful or reckless acts or omissions on the part of the named insured  
21 which increase any hazard insured against;

22 (4) The occurrence of a change in the risk which substantially increases any hazard  
23 insured against after insurance coverage has been issued or renewed;

24 (5) A violation of any local fire, health, safety, building, or construction regulation or  
25 ordinance with respect to any insured property or the occupancy thereof which  
26 substantially increases any hazard insured against;

27 (6) The insurer is unable to reinsure the risk covered by the policy; or



(7) A determination by the commissioner~~{executive director}~~ that the continuation of the policy would place the insurer in violation of the Kentucky insurance code or regulations of the commissioner~~{executive director}~~.

→ Section 1314. KRS 304.20-350 is amended to read as follows:

If the commissioner~~{executive director}~~ determines that:

(1) An insurer has violated KRS 304.20-320, 304.20-330 or 304.20-340, the commissioner~~{executive director}~~ may require the insurer to:

(a) Accept the application or written request for insurance coverage at a rate and on the same terms and conditions as are available to other risks similarly situated;

(b) Reinstate insurance coverage to the end of the policy period; or

(c) Continue insurance coverage at a rate and on the same terms and conditions as are available to other risks similarly situated;

(2) Any person has violated any provisions of KRS 304.20-320 to this section, the commissioner~~{executive director}~~ may:

(a) Issue a cease and desist order to restrain such person from engaging in practices which violate KRS 304.20-320 to this section;

(b) Suspend or revoke such person's license or certificate of authority;

(c) Assess a civil penalty against such person pursuant to KRS 304.99-020; or

(d) Take any combination of the actions specified in this section.

→ Section 1315. KRS 304.20-380 is amended to read as follows:

Every property insurer, as defined in this chapter, authorized to do business in this state shall include a premium credit or discount provision in its rates filed with the commissioner~~{executive director}~~ for buildings equipped with an automatic sprinkler system. The amount of the discount shall reflect the cost savings the insurer expects to realize in insuring property equipped with automatic sprinkler systems.

→ Section 1316. KRS 304.21-020 is amended to read as follows:

- 1 (1) Whenever an insurer has been granted a certificate of authority to transact surety  
 2 insurance in this state, the commissioner~~[executive director]~~ shall on or before the  
 3 first day of the next succeeding month send to the county clerk of each county in  
 4 this state his or her certificate, over the seal of the department~~[his office]~~, stating  
 5 that such insurer has complied with the laws of this state and is authorized to  
 6 transact a business as surety in this state. The county clerk shall record the  
 7 certificate and it shall become a permanent part of the records of the county clerk.
- 8 (2) The commissioner~~[executive director]~~ shall on or before the first day of March of  
 9 each year forward to each county clerk a list containing the names of all surety  
 10 insurers, foreign and domestic, which are then authorized to transact business in the  
 11 state.
- 12 (3) The county clerks shall preserve such list on the files of the court, open to public  
 13 inspection.

14 ➔Section 1317. KRS 304.21-030 is amended to read as follows:

15 If a theretofore authorized surety insurer withdraws from this state or if its certificate of  
 16 authority is terminated, the commissioner~~[executive director]~~ shall give notice thereof  
 17 forthwith by mailing a certificate of such fact to the county clerk of each county in this  
 18 state. Upon receipt of the certificate the county clerk shall enter a notation across the face  
 19 of the record of the certificate of authority of the insurer as referred to in KRS 304.21-  
 20 020, showing the withdrawal of the insurer or the termination of its certificate of  
 21 authority, as the case may be, together with the date thereof.

22 ➔Section 1318. KRS 304.21-040 is amended to read as follows:

- 23 (1) The commissioner~~[executive director]~~ is authorized to issue to any person applying  
 24 therefor, a certificate showing that any surety insurer that has complied with the  
 25 laws of this state, is qualified to do a surety business in this state, and stating the  
 26 general terms of the risks authorized to be so written.
- 27 (2) Any such certificate or any certified copy of any uncanceled certificate shall be

received in evidence as a sufficient justification of such surety and its authority to do business in this state; provided, however, that the certificate of the county clerk to any such certified copy, or any certificate furnished directly by the commissioner~~executive director~~ to an applicant therefor, must bear a date the same as, or later than the date of the bond, undertaking or obligation upon which justification is being made.

→ Section 1319. KRS 304.21-090 is amended to read as follows:

Whenever any licensed company writing blanket bonds on banks or credit unions in the Commonwealth intends to cancel, terminate or not renew the bond of any bank or credit union, it shall notify the Department~~Office~~ of Financial Institutions of its intention to cancel, terminate or not renew any such bond not less than thirty (30) days prior to the effective date of such action.

→ Section 1320. KRS 304.22-020 is amended to read as follows:

(1) Every title insurer shall, before use in this state, file with the commissioner~~executive director~~ its schedule of the risk portion of premium rates for title insurance, and thereafter every modification or amendment thereof.

(2) Rates for title insurance shall not be excessive, inadequate, or unfairly discriminatory.

(3) The insurer shall adhere to the rates as so filed by it.

→ Section 1321. KRS 304.22-040 is amended to read as follows:

An insurer shall not in any manner guarantee the payment of the principal or the interest of bonds or other obligations executed by others, other than (a) in connection with the handling of litigation relating to losses or claims involving the insurer, its insureds, its agents or its attorneys, or (b) in connection with the settlement of such losses or claims, or (c) in the event such guarantee is specifically approved by the commissioner~~executive director~~.

→ Section 1322. KRS 304.24-050 is amended to read as follows:

- 1 (1) Upon receipt of the articles of incorporation of the proposed insurer, the  
2 commissioner~~executive director~~ shall submit such articles to the Attorney General  
3 for examination. Within ten (10) days after receipt thereof the Attorney General  
4 shall return the articles to the commissioner~~executive director~~ with a written  
5 statement as to whether the articles comply with law.
- 6 (2) If the Attorney General has found the articles to be in compliance with law and has  
7 so stated to the commissioner~~executive director~~, the commissioner~~executive~~  
8 ~~director~~ shall stamp or otherwise certify his or her approval thereon, retain one (1)  
9 copy of the articles for his or her files and deliver the remaining three (3) copies of  
10 the articles to the incorporators for filing as provided by laws governing business  
11 corporations generally.
- 12 (3) The incorporators shall concurrently file with the commissioner~~executive director~~  
13 duplicates of filings made on behalf of the corporation with the  
14 commissioner~~executive director~~ of the Department~~Office~~ of Financial  
15 Institutions pursuant to KRS Chapter 292, and upon compliance with the provisions  
16 of such chapter governing sale of securities, the incorporators may open books to  
17 receive subscriptions for capital stock of the corporation.
- 18 (4) After all stock stated by the articles as to the amount of capital with which the  
19 corporation will begin business (which shall not be less than the applicable  
20 minimum amounts required by the provisions of this code to qualify for authority to  
21 transact the kind of insurance specified by the articles) has been subscribed and paid  
22 for either in cash or in assets of the kind eligible for investment of a domestic  
23 insurer under this code, the incorporators shall make application for a certificate of  
24 authority as provided in Subtitle 3.
- 25 (5) In addition to the requirements of this subtitle, the incorporators shall also comply  
26 with such other applicable laws governing the organization of domestic business  
27 corporations as are not in conflict with the provisions of this subtitle.

➔Section 1323. KRS 304.24-060 is amended to read as follows:

(1) Upon receiving the application provided for in subsection (4) of KRS 304.24-050, the commissioner~~[executive-director]~~ shall make an examination of the affairs of the proposed corporation to ascertain whether it has complied with requirements of law and has fully paid-in capital stock and assets in amount necessary to qualify for authority to transact the kind or kinds of insurance proposed to be transacted. As a part of such examination the commissioner~~[executive-director]~~ shall require the incorporators or directors to certify, under oath, that assets exhibited to him or her are the bona fide property of the proposed corporation.

(2) If after such examination the commissioner~~[executive-director]~~ finds that the proposed corporation is fully entitled thereto, the commissioner~~[he]~~ shall issue to it his or her certificate of authority to transact the kind or kinds of insurance for which it has qualified.

➔Section 1324. KRS 304.24-070 is amended to read as follows:

The incorporation of an insurer shall be effective as of the date of issuance by the Secretary of State of its articles of incorporation; and thereupon the corporation shall be vested with all the powers, rights and privileges, and be subject to all the duties, liabilities and restrictions applicable to insurer corporations; subject, however, to qualification and application for, and issuance to the corporation of, a certificate of authority as an insurer by the commissioner~~[executive-director]~~ under the provisions of this code.

➔Section 1325. KRS 304.24-080 is amended to read as follows:

(1) A domestic mutual insurer heretofore or hereafter formed may amend its articles of incorporation for any lawful purpose by affirmative vote of a majority of those of its members present or represented by proxy at any regular annual meeting of its members, or at any special meeting of members called for the purpose. Written notice of the proposed amendment shall be given members at least thirty (30) days prior to the meeting, and may be given in the same manner and at the same time as

1 notice of the meeting is given or in any other appropriate manner.

2 (2) Upon adoption of the amendment the insurer shall prepare articles of amendment in  
3 quadruplicate, setting forth the amendment and the date and manner of the adoption  
4 thereof. The articles of amendment shall be executed by the insurer's president or  
5 vice president and secretary or assistant secretary, and be acknowledged by them  
6 before an officer authorized by law to take acknowledgments of deeds.

7 (3) The quadruplicate originals of the articles of amendment shall be delivered to the  
8 commissioner~~[executive director]~~, shall be subject to examination and certification  
9 by the Attorney General, to approval by the commissioner~~[executive director]~~, and  
10 to filing, all as provided for original articles of incorporation under KRS 304.24-  
11 040. For filing articles of amendment of the articles of incorporation of a domestic  
12 mutual insurer the Secretary of State shall charge and collect a fee of ten dollars  
13 (\$10), for credit to the general fund.

14 ➔Section 1326. KRS 304.24-090 is amended to read as follows:

15 (1) A domestic stock insurer may amend its articles of incorporation for any lawful  
16 purpose through the same procedures prescribed in KRS Chapter 271B.

17 (2) Quadruplicate originals of articles of amendment shall be delivered to the  
18 commissioner~~[executive director]~~, shall be subject to examination and certification  
19 by the Attorney General, to approval by the commissioner~~[executive director]~~, and  
20 to filing, all as provided for original articles of incorporation under KRS 304.24-  
21 040.

22 ➔Section 1327. KRS 304.24-110 is amended to read as follows:

23 (1) Before soliciting any applications for insurance required under KRS 304.24-100 as  
24 qualification for the original certificate of authority, the incorporators of the  
25 proposed insurer shall file with the commissioner~~[executive director]~~ a corporate  
26 surety bond in the penal sum of \$100,000, in favor of the state and for the use and  
27 benefit of the state and of applicant members and creditors of the corporation. The

1 bond shall be conditioned as follows:

2 (a) For the prompt return to applicant members of all premiums collected in  
3 advance,

4 (b) For payment of all indebtedness of the corporation,

5 (c) For payment of costs incurred by the state in event of any legal proceedings  
6 for liquidation or dissolution of the corporation,

7 all in the event the corporation fails to complete its organization and secure a  
8 certificate of authority within one (1) year after the date of its certificate of  
9 incorporation, and

10 (d) That it is not subject to cancellation unless thirty (30) days' advance notice in  
11 writing of cancellation is given both the incorporators and the  
12 commissioner~~executive director~~.

13 (2) In lieu of such bond, the incorporators may deposit with the  
14 commissioner~~executive director~~ \$100,000 in cash or United States government  
15 bonds negotiable and payable to the bearer, with a market value of not less than  
16 \$100,000, to be held in trust upon the same conditions as required for the bond.

17 (3) Any such bond filed or deposit or remaining portion thereof held under this section  
18 shall be released and discharged upon settlement and termination of all liabilities  
19 against it.

20 (4) In addition to the bond the proposed insurer shall file with the  
21 commissioner~~executive director~~ copies of any proposed form or policy to be  
22 offered and schedule of premium rates therefor, copies of all advertising and sales  
23 literature proposed to be used in such solicitation, and such other information  
24 relative to the solicitation of such insurance or procuring of such funds as the  
25 commissioner~~executive director~~ may reasonably require, all of which must  
26 comply with the law.

27 ➔Section 1328. KRS 304.24-120 is amended to read as follows:

- 1 (1) Upon receipt of the commissioner's~~[executive director's]~~ approval of the bond or  
2 deposit as provided in KRS 304.24-110, the directors and officers of the proposed  
3 domestic mutual insurer may commence solicitation of such requisite applications  
4 for insurance policies as they may accept, and may receive deposits of premiums  
5 thereon.
- 6 (2) All such applications shall be in writing signed by the applicant, covering subjects  
7 of insurance resident, located or to be performed in this state.
- 8 (3) All such applications shall provide that:
- 9 (a) Issuance of the policy is contingent upon the insurer qualifying for and  
10 receiving a certificate of authority;
- 11 (b) No insurance is in effect unless and until the certificate of authority has been  
12 issued; and
- 13 (c) The prepaid premium or deposit, and membership or policy fee, if any, shall  
14 be refunded in full to the applicant if organization is not completed and the  
15 certificate of authority is not issued and received by the insurer before a  
16 specified reasonable date, which date shall be not later than one (1) year after  
17 the date of the certificate of incorporation.
- 18 (4) All qualifying premiums collected shall be in cash.
- 19 (5) Solicitation for such qualifying applicants for insurance shall be by licensed agents  
20 of the corporation, and the commissioner~~[executive director]~~ shall, upon the  
21 corporation's application therefor, issue temporary agent's licenses expiring on the  
22 date specified pursuant to paragraph (c) of subsection (3) of this section to  
23 individuals qualified as for a resident's license except as to the taking or passing of  
24 an examination. The commissioner~~[executive director]~~ may suspend or revoke any  
25 such license for any of the causes and pursuant to the same procedures as are  
26 applicable to suspension or revocation of licenses of agent's in general under  
27 Subtitle 9.



➔Section 1329. KRS 304.24-130 is amended to read as follows:

(1) All sums collected by a domestic mutual corporation as premiums or fees on qualifying applications for insurance therein shall be deposited in trust in a bank or trust company in this state under a written trust agreement consistent with this section and with paragraph (c) of subsection (3) of KRS 304.24-120 and 304.24-140. The corporation shall file an executed copy of such trust agreement with the commissioner~~executive director~~.

(2) Upon issuance to the corporation of a certificate of authority as an insurer for the kind of insurance for which such applications were solicited, all funds so held in trust shall become the funds of the insurer, and the insurer shall thereafter in due course issue and deliver its policies for which premiums had been paid and accepted. The insurance provided by such policies shall be effective as of the date of the certificate of authority or thereafter as provided by the respective policies.

➔Section 1330. KRS 304.24-140 is amended to read as follows:

If the proposed domestic insurer fails to complete its organization and to secure its original certificate of authority within one (1) year after the date of its certificate of incorporation, its corporate powers shall cease, and the commissioner~~executive director~~ shall return or cause to be returned to the persons entitled thereto all advance deposits or payments of premiums held in trust under KRS 304.24-130.

➔Section 1331. KRS 304.24-150 is amended to read as follows:

After being authorized to transact one (1) kind of insurance a mutual insurer may be authorized by the commissioner~~executive director~~ to transact additional kinds of insurance by compliance with the applicable financial requirements set forth in KRS 304.24-100 and by otherwise complying with the applicable provisions of this code.

➔Section 1332. KRS 304.24-170 is amended to read as follows:

(1) A domestic mutual insurer shall have bylaws for the government of its affairs. The insurer's initial board of directors shall adopt original bylaws, subject to the

1 approval of the insurer's members at the next meeting of members.

2 (2) The bylaws shall contain provisions, consistent with this code, relating to:

- 3 (a) The voting rights of members;
- 4 (b) Election of directors, and the number, qualifications, terms of office and
- 5 powers of directors;
- 6 (c) Annual and special meetings of members;
- 7 (d) The number, designation, election, terms and powers and duties of the
- 8 respective corporate officers;
- 9 (e) Deposit, custody, disbursement and accounting for corporate funds;
- 10 (f) Fidelity bonds covering officers and employees of the insurer handling its
- 11 funds, to be issued by the corporate surety and to be in such amount as may be
- 12 reasonable; and
- 13 (g) Such other matters as may be customary, necessary, or convenient for the
- 14 management or regulation of corporate affairs.

15 (3) The insurer shall promptly file with the commissioner~~executive director~~ a copy,

16 certified by the insurer's secretary, of its bylaws and of every modification thereof or

17 addition thereto. The commissioner~~executive director~~ shall disapprove any bylaw

18 provision deemed by him or her, after a hearing held thereon, to be unlawful,

19 unreasonable, inadequate, unfair or detrimental to the proper interests or protection

20 of the insurer's members or any class thereof. The insurer shall not, after receiving

21 written notice of such disapproval and during the existence thereof, effectuate any

22 bylaw provision so disapproved.

23 ➔Section 1333. KRS 304.24-190 is amended to read as follows:

24 (1) Meetings of members of a domestic mutual insurer shall be held in the city or town

25 of its registered office in this state, except as may otherwise be provided in the

26 insurer's bylaws with the commissioner's~~executive director's~~ approval.

27 (2) Each such insurer shall, during the first six (6) months of each calendar year, hold

the annual meeting of its members to fill vacancies existing or occurring in the board of directors, receive and consider reports of the insurer's officers as to its affairs and transact such other business as may properly be brought before it.

(3) Written notice of the time and place of the annual meeting of members shall be given members not less than thirty (30) days prior to the meeting. Notice may be given by imprinting the notice plainly on the policies issued by the insurer or in any other appropriate manner. Any change of the date or place of the annual meeting shall be made only by an annual meeting of members. Notice of such change, among other appropriate methods may be given:

(a) By imprinting such new date or place on all policies which will be in effect as of the date of such changed meeting;

(b) Unless the commissioner~~executive director~~ otherwise orders, notice of the new date or place need be given only through policies issued after the date of the annual meeting at which such change was made and in premium notices and renewal certificates issued during the twenty-four (24) months immediately following such meeting.

(4) If more than six (6) months are allowed to elapse after an annual meeting of members is due to be held without such annual meeting being held, the commissioner~~executive director~~ shall, upon written request of any officer, director, or member of the insurer, cause written notice of such meeting to be given to the insurer's members, and the meeting shall be held as soon as reasonably possible thereafter.

→Section 1334. KRS 304.24-230 is amended to read as follows:

(1) If at any time the assets of a domestic mutual insurer are less than its liabilities and the minimum amount of surplus required to be maintained by it under this code for authority to transact the kinds of insurance being transacted, and the deficiency is not cured from other sources, its directors may, if the same is approved by the

1        commissioner~~[executive director]~~, levy an assessment only on its members who  
 2        held policies providing for contingent liability at any time within the twelve (12)  
 3        months next preceding the date the levy was authorized by the board of directors,  
 4        and such members shall be liable to the insurer for the amount so assessed.

5        (2) The levy of assessment shall be for such an amount, subject to the  
 6        commissioner's~~[executive director's]~~ approval, as is required to cure such  
 7        deficiency and to provide a reasonable amount of working funds above such  
 8        minimum amount of surplus, but such working funds so provided shall not exceed  
 9        five percent (5%) of the sum of the insurer's liabilities and such minimum required  
 10       surplus as of the date of the levy.

11       (3) As to the respective policies subject to the levy, the assessment shall be computed  
 12       upon such reasonable basis as may be approved by the commissioner~~[executive~~  
 13       ~~director]~~ in writing in advance of the levy.

14       (4) No member shall have an offset against any assessment for which he or she is  
 15       liable, on account of any claim for unearned premium or loss payable.

16       (5) As to life insurance, any part of such assessment upon a member which remains  
 17       unpaid following notice of assessment, demand for payment, and lapse of a  
 18       reasonable waiting period as specified in such notice, may, if approved by the  
 19       commissioner~~[executive director]~~ as being in the best interests of the insurer and its  
 20       members, be secured by placing a lien upon the cash surrender values and  
 21       accumulated dividends held by the insurer to the credit of the member.

22       ➔Section 1335. KRS 304.24-250 is amended to read as follows:

23       (1) A domestic mutual insurer while maintaining unimpaired surplus funds not less in  
 24       amount than the minimum paid-in capital stock and surplus required to be  
 25       maintained by a domestic stock insurer, formed under this code, for authority to  
 26       transact the same kinds or kind of insurance, may, upon receipt of the  
 27       commissioner's~~[executive director's]~~ order so authorizing, extinguish the

1 contingent liability to assessment of its members as to all its policies in force and  
 2 may omit provisions imposing contingent liability in all policies currently issued.

3 (2) The commissioner~~executive director~~ shall not authorize a domestic insurer to  
 4 extinguish the contingent liability of any of its members or in any of its policies to  
 5 be issued, unless it qualifies to and does extinguish such liability of all its members  
 6 and in all such policies for all kinds of insurance transacted by it.

7 (3) A foreign or alien mutual insurer may issue nonassessable policies to its members  
 8 in this state pursuant to its charter and the laws of its domicile.

9 ➔Section 1336. KRS 304.24-260 is amended to read as follows:

10 (1) The commissioner~~executive director~~ shall revoke the authority of a domestic  
 11 mutual insurer to issue policies without contingent liability if

12 (a) At any time the insurer's assets are less than the sum of its liabilities and the  
 13 surplus required for such authority, or

14 (b) The insurer, by resolution of its board of directors approved by a majority of  
 15 its members, requests that the authority be revoked.

16 (2) During the absence of such authority the insurer shall not issue any policy without  
 17 providing therein for the contingent liability of the policyholder, nor renew any  
 18 policy which is then in force without indorsing the same to provide for such  
 19 contingent liability.

20 ➔Section 1337. KRS 304.24-280 is amended to read as follows:

21 (1) No insurer shall hereafter make any contract whereby any person is granted or is to  
 22 enjoy in fact the management of the insurer to the substantial exclusion of its board  
 23 of directors, or to have the controlling or preemptive right to produce substantially  
 24 all insurance business for the insurer, or, if an officer, director or otherwise part of  
 25 the insurer's management, is to receive any commission, bonus or compensation  
 26 based upon the volume of the insurer's business or transactions, unless the contract  
 27 is filed with and approved by the commissioner~~executive director~~. The contract

1 shall be deemed approved unless disapproved by the commissioner~~executive~~  
 2 ~~director~~] within twenty (20) days after date of filing, subject to such reasonable  
 3 extension of time as the commissioner~~executive director~~] may require by notice  
 4 given within such twenty (20) days. Any disapproval shall be delivered to the  
 5 insurer in writing, stating the grounds therefor.

6 (2) Any such contract shall provide that any such manager or producer of its business  
 7 shall within ninety (90) days after expiration of each calendar year furnish the  
 8 insurer's board of directors a written statement of amounts received under or on  
 9 account of the contract and amounts expended thereunder during such calendar  
 10 year, including the emoluments received therefrom by the respective directors,  
 11 officers, and other principal management personnel of the manager or producer, and  
 12 with such classification of items and further detail as the insurer's board of directors  
 13 may reasonably require.

14 (3) The commissioner~~executive director~~] shall disapprove any such contract if he or  
 15 she finds that it:

- 16 (a) Subjects the insurer to excessive charges; or
- 17 (b) Is to extend for any unreasonable length of time; or
- 18 (c) Does not contain fair and adequate standards of performance, or
- 19 (d) Contains other inequitable provision or provisions which impair the proper  
 20 interests of stockholders or policyholders of the insurer.

21 (4) The commissioner~~executive director~~] may, after a hearing held thereon, withdraw  
 22 his or her approval of any such contract theretofore approved by him or her, if he  
 23 or she finds that the bases of his or her original approval no longer exist, or that the  
 24 contract has in actual operation, shown itself to be subject to disapproval on any of  
 25 the grounds referred to in subsection (3) of this section.

26 (5) This section does not apply as to contracts entered into prior to June 18, 1970, nor  
 27 to extensions or amendments to such contracts, nor to relationships and agreements

1 between parents, subsidiaries, or affiliates.

2 ➔Section 1338. KRS 304.24-290 is amended to read as follows:

3 The insurer shall establish and maintain in this state its principal office and place of  
4 business. The insurer's principal records shall be kept either at its principal office or, with  
5 the approval of the commissioner~~[executive director]~~, at its place of business in any other  
6 state where it, or its affiliate as defined in subsection (4) of KRS 304.37-010, is engaged  
7 in the business of entering into contracts of insurance.

8 ➔Section 1339. KRS 304.24-300 is amended to read as follows:

9 (1) A domestic stock or mutual insurer may borrow money to defray the expenses of its  
10 organization, provide it with surplus funds, or for any purpose of its business, upon  
11 a written agreement that such money is required to be repaid only out of the  
12 insurer's surplus in excess of that stipulated in such agreement. The agreement may  
13 provide for interest, which interest shall or shall not constitute a liability of the  
14 insurer as to its funds other than such excess of surplus, as stipulated in the  
15 agreement. No commission or promotion expense shall be paid in connection with  
16 any such loan, except that if public offering and sale is made of the loan securities,  
17 the insurer may pay the reasonable costs thereof approved by the  
18 commissioner~~[executive director]~~.

19 (2) Money so borrowed, together with the interest thereon if so stipulated in the  
20 agreement, shall not form a part of the insurer's legal liabilities except as to its  
21 surplus in excess of the amount thereof stipulated in the agreement, or be the basis  
22 of any setoff; but until repaid, financial statements filed or published by the insurer  
23 shall show as a footnote thereto the amount thereof then unpaid together with any  
24 interest thereon accrued but unpaid. A surplus note shall be reported as surplus and  
25 not as debt only if the surplus note contains the following provisions:

26 (a) Subordination to policyholder;

27 (b) Subordination to claimant and beneficiary claims;

- 1 (c) Subordination to all other classes of creditors other than surplus note holders;  
2 and
- 3 (d) Interest payments and principal repayments require prior approval of the state  
4 of domicile.
- 5 (3) Any such loan shall be subject to the commissioner's~~executive director's~~  
6 approval. The insurer shall in advance of the loan, file with the  
7 commissioner~~executive director~~ a statement of the purpose of the loan and a copy  
8 of the proposed loan agreement. The loan and agreement shall be deemed approved  
9 unless within fifteen (15) days after date of such filing the insurer is notified of the  
10 commissioner's~~executive director's~~ disapproval and the reasons therefor. The  
11 commissioner~~executive director~~ shall disapprove any proposed loan or agreement  
12 if he or she finds the loan is unnecessary or excessive for the purpose intended, or  
13 that the terms of the loan agreement are not fair and equitable to the parties and to  
14 other similar lenders, if any, to the insurer, or that the information so filed by the  
15 insurer is inadequate.
- 16 (4) Any such loan or substantial portion thereof shall be repaid by the insurer when no  
17 longer reasonably necessary for the purpose originally intended. No repayment of  
18 such a loan shall be made unless approved in advance by the  
19 commissioner~~executive director~~.
- 20 (5) This section shall not apply to other kinds of loans obtained by the insurer in  
21 ordinary course of business, nor to loans secured by pledge or mortgage of assets.
- 22 ➔Section 1340. KRS 304.24-350 is amended to read as follows:
- 23 (1) If the assets of an insurer at any time are less than its liabilities, including its capital  
24 stock as a liability, if a stock insurer, or its minimum required surplus if a mutual  
25 insurer, the commissioner~~executive director~~ shall forthwith determine the amount  
26 of such deficiency and give notice to the insurer to make good the deficiency within  
27 ninety (90) days after the giving of such notice.



1 (2) The insurer may cure the deficiency by a decrease of its capital stock or by other  
 2 lawful means. The deficiency shall be made good in cash or in assets eligible under  
 3 this code for investment of the insurer's funds or by decrease of the insurer's capital  
 4 stock to an amount not below the minimum required for the kinds of insurance to be  
 5 thereafter transacted.

6 (3) If the deficiency is not made good and proof thereof filed with the  
 7 commissioner~~executive director~~ within such ninety-day period, the  
 8 commissioner~~executive director~~ shall revoke the insurer's certificate of authority,  
 9 the insurer shall be deemed insolvent, and shall be proceeded against as authorized  
 10 by this code.

11 ➔Section 1341. KRS 304.24-360 is amended to read as follows:

12 (1) A stock insurer may become a mutual insurer under such reasonable plan and  
 13 procedure as may be approved by the commissioner~~executive director~~ after a  
 14 hearing thereon.

15 (2) The commissioner~~executive director~~ shall not approve any such plan or procedure  
 16 of mutualization unless:

17 (a) The commissioner~~He~~ finds that it is equitable to stockholders and  
 18 policyholders;

19 (b) It is subject to approval by the holders of not less than three-fourths (3/4) of  
 20 the insurer's outstanding capital stock having voting rights, and by not less  
 21 than two-thirds (2/3) of the insurer's policyholders, who vote on such plan in  
 22 person, by proxy, or by mail, pursuant to such reasonable notice and procedure  
 23 as may be approved by the commissioner~~executive director~~;

24 (c) If a life insurer, the right to vote thereon is limited to holders of policies, other  
 25 than term or group policies, whose policies have been in force for more than  
 26 one (1) year;

27 (d) Mutualization will result in retirement of shares of the insurer's capital stock

1 at a price not in excess of the fair market value thereof as determined by  
2 competent disinterested appraisers;

3 (e) The plan provides for the purchase of the shares of any dissenting stockholder  
4 in the same manner and subject to the same applicable conditions as provided  
5 by KRS Chapter 271B as to rights of dissenting stockholders with respect to  
6 merger or consolidation of business corporations;

7 (f) The plan provides for definite conditions to be fulfilled by a designated early  
8 date upon which such mutualization will be deemed effective; and

9 (g) The mutualization leaves the insurer with surplus funds reasonably adequate  
10 for the security of its policyholders and to enable it to continue successfully in  
11 business in the states in which it is then authorized to transact insurance and  
12 for the kinds of insurance included in its certificates of authority in such  
13 states.

14 (3) This section shall not apply to mutualization under order of court pursuant to  
15 rehabilitation or reorganization of an insurer under Subtitle 33.

16 ➔Section 1342. KRS 304.24-370 is amended to read as follows:

17 A domestic stock insurer may convert to a Kentucky ordinary business corporation  
18 through the following procedures:

19 (1) The insurer shall give the commissioner~~[executive director]~~ written notice of its  
20 intent to convert to an ordinary business corporation;

21 (2) The insurer shall bulk reinsure all of its insurance, if any, in force, with another  
22 authorized insurer under a bulk reinsurance agreement approved by the  
23 commissioner~~[executive director]~~ as provided in KRS 304.24-420. The agreement  
24 of bulk reinsurance may be made contingent upon approval of stockholders as  
25 provided in subsection (4) of this section;

26 (3) The insurer shall set aside funds in a special reserve in such amount and subject to  
27 such administration as may be found by the commissioner~~[executive director]~~ to be

1 reasonable and adequate for the purpose, for payment of all obligations, if any, of  
 2 the insurer incurred by it and remaining unpaid under its insurance contracts prior to  
 3 the effective date of such bulk reinsurance, or make other reasonable disposition  
 4 satisfactory to the commissioner~~executive director~~ for such payment;

5 (4) The proposed conversion shall be approved by affirmative vote of not less than two-  
 6 thirds (2/3) of each class of outstanding securities of the insurer having voting  
 7 rights, at a special meeting of holders of such securities called for the purpose; and  
 8 at such meeting and by a like vote the certificate of organization of the corporation  
 9 shall be amended to remove therefrom the power to transact an insurance business  
 10 as an insurer, to provide for such new powers and purposes authorized by the  
 11 general corporation laws of this state as may be consistent with the purposes for  
 12 which the corporation is thereafter to exist, and to make such further alterations in  
 13 the certificate of organization as may be required under such general corporation  
 14 laws of an ordinary business corporation;

15 (5) Security holders of the corporation who dissent from such proposed conversion  
 16 shall have the same applicable rights as exist under such general corporation laws  
 17 with respect to dissent from a proposed merger of the corporation; and

18 (6) Upon compliance with subsections (1) to (4) of this section, inclusive, and upon  
 19 filing of the amendment of the certificate of organization with the  
 20 commissioner~~executive director~~ and otherwise as required by laws applicable to  
 21 ordinary business corporations, the conversion shall thereupon become effective.

22 ➔Section 1343. KRS 304.24-390 is amended to read as follows:

23 (1) A domestic insurer may merge or consolidate with one (1) or more domestic or  
 24 foreign insurers, by complying with the applicable provisions of the statutes of this  
 25 state governing the merger or consolidation of corporations formed for profit, but  
 26 subject to subsections (2), (3) and (4) of this section.

27 (2) No such merger or consolidation shall be effectuated unless in advance thereof the

plan and agreement therefor have been filed with the commissioner~~[executive director]~~ and approved in writing by him or her after a hearing thereon. The commissioner~~[executive director]~~ shall give such approval within a reasonable time after such filing unless the commissioner~~[he]~~ finds such plan or agreement:

- (a) Is contrary to law; or
- (b) Inequitable to the stockholders or members of the insurers involved; or
- (c) Would substantially reduce the security of and service to be rendered to policyholders of the domestic insurer in this state or elsewhere; or
- (d) Would materially tend to lessen competition in the insurance business in this state or elsewhere as to the kinds of insurance involved, or would materially tend to create a monopoly as to such business; or
- (e) Is subject to other material and reasonable objections.

(3) No director, officer, agent or employee of any insurer party to such merger or consolidation, or member of the family of such director, officer, agent, or employee, shall receive any fee, commission, compensation or other valuable consideration whatsoever for in any manner aiding, promoting or assisting therein except as set forth in such plan or agreement.

(4) If members of an insurer are entitled to vote, two-thirds (2/3) of the votes cast by such members of such insurer, as are represented at the meeting in person or by proxy, is necessary for the approval of any such agreement or plan.

(5) If the commissioner~~[executive director]~~ does not approve any such plan or agreement he or she shall so notify the insurer in writing specifying his or her reasons therefor.

→Section 1344. KRS 304.24-400 is amended to read as follows:

(1) A domestic stock insurer shall not acquire a controlling interest in the shares of another stock insurer by an exchange of securities or partly in exchange for securities and partly for cash or property, unless the insurer has first submitted the

1 plan for such acquisition and exchange to the commissioner~~[executive director]~~ and  
 2 the commissioner~~[executive director]~~ has approved the same.

3 (2) The commissioner~~[executive director]~~ shall not so approve unless he or she finds  
 4 the plan for such acquisition and exchange and the terms and conditions thereof to  
 5 be fair and equitable to all parties concerned therein, after a hearing to which all  
 6 persons to whom it is proposed to issue securities in such exchange shall have the  
 7 right to appear.

8 (3) Notice and conduct of such hearing shall be as provided in Subtitle 2.

9 ➔Section 1345. KRS 304.24-415 is amended to read as follows:

10 (1) (a) Every insurer domiciled in this state shall file a report with the  
 11 commissioner~~[executive director]~~ disclosing material acquisitions and  
 12 dispositions of assets or material nonrenewals, cancellations, or revisions of  
 13 ceded reinsurance agreements unless the acquisitions and dispositions of  
 14 assets or material nonrenewals, cancellations, or revisions of ceded  
 15 reinsurance agreements have been submitted to the commissioner~~[executive~~  
 16 ~~director]~~ for review, approval, or information purposes pursuant to other  
 17 provisions of this chapter.

18 (b) The report required in paragraph (a) of this subsection is due within fifteen  
 19 (15) days after the end of the calendar month in which any of the foregoing  
 20 transactions occur.

21 (c) One (1) complete copy of the report, including any exhibits or other  
 22 attachments, shall be filed with:

- 23 1. The insurance department of the insurer's state of domicile; and
- 24 2. The National Association of Insurance Commissioners.

25 (d) All reports obtained by or disclosed to the commissioner~~[executive director]~~  
 26 pursuant to this section shall be given confidential treatment and shall not be  
 27 subject to subpoena and shall not be made public by the

1 commissioner~~[executive director]~~, the National Association of Insurance  
 2 Commissioners, or any other person, except to insurance departments of other  
 3 states, without the prior written consent of the insurer to which it pertains  
 4 unless the commissioner~~[executive director]~~, after giving the insurer who  
 5 would be affected notice and opportunity to be heard, determines that the  
 6 interest of policyholders, shareholders, or the public will be served by  
 7 publication, in which event the commissioner~~[executive director]~~ may publish  
 8 all or any part in the manner the commissioner~~[executive director]~~ may deem  
 9 appropriate.

10 (2) (a) No acquisitions or dispositions of assets need be reported pursuant to  
 11 subsection (1) of this section if the acquisitions or dispositions are not  
 12 material. For purposes of this section, a material acquisition, or the aggregate  
 13 of any series of related acquisitions during any thirty (30) day period, is one  
 14 that is nonrecurring and not in the ordinary course of business and involves  
 15 more than five percent (5%) of the reporting insurer's total admitted assets as  
 16 reported in its most recent statutory statement filed with the insurance  
 17 department of the insurer's state of domicile.

18 (b) 1. Asset acquisitions subject to this section include every purchase, lease  
 19 exchange, merger, consolidation, succession, or other acquisition other  
 20 than the construction or development of real property by or for the  
 21 reporting insurer or the acquisition of materials for such purpose.

22 2. Asset dispositions subject to this section include every sale, lease,  
 23 exchange, merger, consolidation, mortgage, hypothecation, assignment  
 24 (whether for the benefit of creditors or otherwise), abandonment,  
 25 destruction, or other disposition.

26 (c) 1. The following information is required to be disclosed in any report of a  
 27 material acquisition or disposition of assets:

- 1 a. Date of the transaction;
- 2 b. Manner of acquisition or disposition;
- 3 c. Description of the assets involved;
- 4 d. Nature and amount of the consideration given or received;
- 5 e. Purpose of, or reason for, the transaction;
- 6 f. Manner by which the amount of consideration was determined;
- 7 g. Gain or loss recognized or realized as a result of the transaction;
- 8 and
- 9 h. Names of the persons from which the assets were acquired or to
- 10 whom they were disposed.

11 2. Insurers are required to report material acquisitions and dispositions on a  
 12 nonconsolidated basis unless the insurer is part of a consolidated group  
 13 of insurers which utilizes a pooling arrangement or one hundred percent  
 14 (100%) reinsurance agreement that affects the solvency and integrity of  
 15 the insurer's reserves and the insurer ceded substantially all of its direct  
 16 and assumed business to the pool. An insurer is deemed to have ceded  
 17 substantially all of its direct and assumed business to a pool if the  
 18 insurer has less than one million dollars (\$1,000,000) total direct plus  
 19 assumed written premiums during a calendar year that are not subject to  
 20 a pooling arrangement and the net income of the business not subject to  
 21 the pooling arrangement represents less than five percent (5%) of the  
 22 insurer's capital and surplus.

23 (3) (a) No nonrenewals, cancellations, or revisions of ceded reinsurance agreements  
 24 need be reported pursuant to subsection (1) of this section if the nonrenewals,  
 25 cancellations or revisions are not material. For purposes of this section, a  
 26 material nonrenewal, cancellation, or revision is one that affects:

- 27 1. As respects property and casualty business, including accident and

- 1 health business written by a property and casualty insurer:
- 2 a. More than fifty percent (50%) of the insurer's total ceded written
- 3 premium; or
- 4 b. More than fifty percent (50%) of the insurer's total ceded
- 5 indemnity and loss adjustment reserves.
- 6 2. As respects life, annuity, and accident and health business, more than
- 7 fifty percent (50%) of the total reserve credit taken for business ceded,
- 8 on an annualized basis, as indicated in the insurer's most recent annual
- 9 statement.
- 10 3. As respects either property and casualty or life, annuity, and accident
- 11 and health business, either of the following events shall constitute a
- 12 material revision which must be reported:
- 13 a. An authorized reinsurer representing more than ten percent (10%)
- 14 of a total cession is replaced by one (1) or more unauthorized
- 15 reinsurers; or
- 16 b. Previously established collateral requirements have been reduced
- 17 or waived as respects one (1) or more unauthorized reinsurers
- 18 representing collectively more than ten percent (10%) of a total
- 19 cession.
- 20 (b) No filing shall be required if:
- 21 1. As respects property and casualty business, including accident and
- 22 health business written by a property and casualty insurer, the insurer's
- 23 total ceded written premium represents, on an annualized basis, less than
- 24 ten percent (10%) of its total written premium for direct and assumed
- 25 business; or
- 26 2. As respects life, annuity, and accident and health business, the total
- 27 reserve credit taken for business ceded represents, on an annualized



1 basis, less than ten percent (10%) of the statutory reserve requirements  
2 prior to any cession.

3 (c) The following information is required to be disclosed in any report of a  
4 material nonrenewal, cancellation, or revision of ceded reinsurance  
5 agreements:

- 6 1. Effective date of the nonrenewal, cancellation, or revision;
- 7 2. The description of the transaction with an identification of the initiator  
8 thereof;
- 9 3. Purpose of, or reason for, the transaction; and
- 10 4. If applicable, the identity of the replacement reinsurers.

11 (d) Insurers are required to report all material nonrenewals, cancellations, or  
12 revisions of ceded reinsurance agreements on a nonconsolidated basis unless  
13 the insurer is part of a consolidated group of insurers which utilizes a pooling  
14 arrangement or one hundred percent (100%) reinsurance agreement that  
15 affects the solvency and integrity of the insurer's reserves and the insurer  
16 ceded substantially all of its direct and assumed business to a pool if the  
17 insurer has less than one million dollars (\$1,000,000) total direct plus  
18 assumed written premiums during a calendar year that are not subject to a  
19 pooling arrangement and the net income of the business not subject to the  
20 pooling arrangement represents less than five percent (5%) of the insurer's  
21 capital and surplus.

22 ➔Section 1346. KRS 304.24-420 is amended to read as follows:

- 23 (1) A domestic insurer may reinsure all or substantially all of its business in force, or all  
24 or substantially all of a major class thereof, with another insurer, stock or mutual, by  
25 an agreement of bulk reinsurance after compliance with this section. No such  
26 agreement shall become effective unless filed with the commissioner~~executive~~  
27 ~~director~~ and approved by him or her in writing.

- 1 (2) The commissioner~~[executive director]~~ shall approve such agreements within a  
 2 reasonable time after filing if he or she finds:
- 3 (a) That the plan and agreement are fair and equitable to each insurer and to the  
 4 policyholders involved;
- 5 (b) That the reinsurance, if effectuated, would not substantially reduce the  
 6 protection or service to the policyholders of any domestic insurer involved;
- 7 (c) That the agreement embodies adequate provisions by which the reinsuring  
 8 insurer becomes liable to the original insureds for any loss or damage  
 9 occurring under the policies reinsured in accordance with the original terms of  
 10 such policies, and that the reinsuring insurer shall duly furnish each such  
 11 insured with a certificate evidencing such assumption of liability;
- 12 (d) That the assuming reinsurer is authorized to transact such insurance in this  
 13 state, or is qualified as for such authorization and will appoint the  
 14 commissioner~~[executive director]~~ and his or her successors as its irrevocable  
 15 attorney for service of process, so long as any policy so reinsured or claim  
 16 thereunder remains in force or outstanding;
- 17 (e) That such reinsurance would not materially tend to lessen competition in the  
 18 insurance business in this state or elsewhere as to the kinds of insurance  
 19 involved, and would not materially tend to create a monopoly as to such  
 20 business; and
- 21 (f) That the proposed bulk reinsurance is free of other reasonable objections.
- 22 (3) If the commissioner~~[executive director]~~ does not so approve he or she shall  
 23 forthwith notify each insurer involved in writing, specifying his or her reasons  
 24 therefor.
- 25 (4) If for reinsurance of all or substantially all of the business in force of a mutual  
 26 insurer at a time when the insurer's surplus is not impaired, the plan and agreement  
 27 for such reinsurance must be approved by vote of not less than two-thirds (2/3) of

the mutual insurer's members voting thereon at a meeting of members called for the purpose, pursuant to such reasonable notice and procedure as is provided for in the agreement. If a life insurer, right to vote may be limited to members whose policies are other than term or group policies, and have been in effect for more than one (1) year.

- (5) No director, officer, agent or employee of any insurer party to such reinsurance, nor any other person shall receive any compensation for arranging such bulk reinsurance other than as provided in the agreement submitted to and approved by the commissioner~~[executive director]~~.

→Section 1347. KRS 304.24-430 is amended to read as follows:

- (1) A solvent domestic stock or mutual insurer, which then is not the subject of a delinquency proceeding under Subtitle 33, may voluntarily dissolve under a plan therefor in writing authorized by its board of directors, approved or adopted by stockholders or members as hereinafter provided, and filed with and approved by the commissioner~~[executive director]~~. The plan shall provide for the disposition, by bulk reinsurance or other lawful procedure, of all insurance in force in the insurer, for full discharge of all obligations of the insurer, and designate or provide for trustees to conduct and administer the settlement of the insurer's affairs.
- (2) The commissioner~~[executive director]~~ shall approve the plan unless found by him or her to be unlawful or unfair or inequitable or prejudicial to the interests of stockholders, policyholders or creditors.
- (3) If a mutual insurer, the plan must have been approved by vote of not less than two-thirds (2/3) of the policyholders voting thereon at a special meeting of such policyholders called and held for the purpose pursuant to such reasonable notice and information as the commissioner~~[executive director]~~ may have approved.
- (4) If a stock insurer, the plan must have been adopted by vote of not less than two-thirds (2/3) of all outstanding voting securities of the insurer at a special meeting of

1 such security holders called and held for the purpose.

2 (5) Following approval of the dissolution and plan therefor by members or adoption  
 3 thereof by stockholders as above provided, and approval by the  
 4 commissioner~~[executive director]~~, the trustees designated or provided for in the  
 5 plan shall proceed to execute the plan. When all liabilities of the corporation have  
 6 been discharged or otherwise adequately provided for, and all assets of the  
 7 corporation have been liquidated and distributed in accordance with the plan, the  
 8 trustees shall so certify in quadruplicate under oath in writing. The trustees shall  
 9 deliver the original and the three (3) copies of such certificate to the  
 10 commissioner~~[executive director]~~. The commissioner~~[executive director]~~ shall  
 11 make such examination of the affairs of the corporation, and of the liquidation and  
 12 distribution of its assets and discharge of or provision for its liabilities as the  
 13 commissioner~~[he]~~ deems advisable. If upon such examination the  
 14 commissioner~~[he]~~ finds that the facts set forth in the certificate of the trustees are  
 15 true, the commissioner~~[he]~~ shall inscribe his or her approval on the certificate, file  
 16 the original thereof so inscribed in the office of the Secretary of State, file copy  
 17 thereof in the department~~[office]~~, and return the remaining two (2) copies to the  
 18 trustees. The trustees shall file one (1) of such copies for recording in the office of  
 19 the county clerk of the county in which the corporation's principal place of business  
 20 is located, and retain the fourth copy for the corporate files.

21 (6) Upon filing the certificate of the trustees with the Secretary of State as provided in  
 22 subsection (5) of this section, the Secretary of State shall issue to the trustees his or  
 23 her certificate of dissolution, and the corporate existence of the corporation shall  
 24 thereupon forever terminate. The Secretary of State shall charge and collect a fee of  
 25 twenty-five dollars (\$25) for the filing of the trustee's certificate, and shall deposit  
 26 the same with the State Treasurer for credit to the general fund.

27 ➔Section 1348. KRS 304.24-440 is amended to read as follows:

1 (1) Upon any liquidation of a domestic mutual insurer, its assets remaining after  
 2 discharge of its indebtedness, policy obligations, repayment of contributed or  
 3 borrowed surplus, if any, and expenses of administration, shall be distributed to  
 4 currently existing persons who had been members of the insurer for at least one (1)  
 5 year and who were its members at any time within thirty-six (36) months next  
 6 preceding the date such liquidation was authorized or ordered, or date of last  
 7 termination of the insurer's certificate of authority whichever date is the earlier;  
 8 except, that if the commissioner~~executive director~~ has reason to believe that those  
 9 in charge of the management of the insurer have caused or encouraged the reduction  
 10 of the number of members of the insurer in anticipation of liquidation and for the  
 11 purpose of reducing thereby the number of persons who may be entitled to share in  
 12 distribution of the insurer's assets, the commissioner~~he~~ may enlarge the thirty-six  
 13 (36) month qualification period above provided for by such additional period as he  
 14 or she may deem to be reasonable.

15 (2) The insurer shall make a reasonable classification of its policies so held by such  
 16 members, and a formula based upon such classification for determining the  
 17 equitable distributive share of each such member. Such classification and formula  
 18 shall be subject to the approval of the commissioner~~executive director~~.

19 ➔Section 1349. KRS 304.24-500 is amended to read as follows:

20 (1) The purpose of this section is to:

- 21 (a) Provide a means whereby any insurer organized under the laws of any other
- 22 state may become a domestic insurer;
- 23 (b) Provide a means for any domestic insurer to transfer its domicile to another
- 24 state; and
- 25 (c) Provide a means for the continuation of a certificate of authority and other
- 26 approvals pertaining to any foreign insurer which transfers its corporate
- 27 domicile to another state by merger, consolidation, or any other lawful

1 method.

- 2 (2) Any insurer which is organized under the laws of any other state and is admitted to  
 3 do business in this state for the purpose of writing insurance may, upon approval of  
 4 the commissioner~~[executive director]~~, become a domestic insurer by complying  
 5 with all of the requirements of this chapter relating to the organization and  
 6 authorization of a domestic insurer of the same type and by designating its principal  
 7 place of business at a place in this state. The domestic insurer shall be entitled to  
 8 like certificates of authority to transact business in this state, and shall be subject to  
 9 the authority and jurisdiction of this state.
- 10 (3) Any domestic insurer may, upon approval of the commissioner~~[executive director]~~,  
 11 transfer its domicile to any other state in which it is admitted to transact the  
 12 business of insurance. Upon the transfer, the insurer shall cease to be a domestic  
 13 insurer, and shall be authorized to transact insurance business in this state if  
 14 qualified as a foreign insurer. The commissioner~~[executive director]~~ shall approve  
 15 the proposed transfer unless the commissioner~~[executive director]~~ shall determine  
 16 the transfer is not in the interest of the policyholders of this state.
- 17 (4) The certificate of authority, agents' appointments and licenses, rates, and other items  
 18 which the commissioner~~[executive director]~~ allows, in the  
 19 commissioner's~~[executive director's]~~ discretion, which are in existence at the time  
 20 any insurer authorized to transact the business of insurance in this state transfers its  
 21 corporate domicile to this or any other state by merger, consolidation, or merger  
 22 pursuant to KRS 271B.11-070, or any other lawful method, shall continue in full  
 23 force and effect upon the transfer if the insurer remains duly qualified to transact the  
 24 business of insurance in this state. All outstanding policies of any transferring  
 25 insurer shall remain in full force and effect and need not be endorsed as to the new  
 26 name of the insurer or its new location unless so ordered by the  
 27 commissioner~~[executive director]~~. Every transferring insurer shall file new policy

forms with the commissioner~~[executive director]~~ on or before the effective date of the transfer but may use existing policy forms with appropriate endorsements if allowed by, and under such conditions as approved by, the commissioner~~[executive director]~~. However, every transferring insurer shall notify the commissioner~~[executive director]~~ in writing of the details of the proposed transfer and shall file promptly appropriate amendments to corporate documents required to be filed with the commissioner~~[executive director]~~.

(5) (a) Any insurer transferring its domicile in accordance with subsections (2) or (3) of this section shall file an application for redomestication and transfer of domicile with the commissioner~~[executive director]~~. This transfer of domicile must be approved by order of the commissioner~~[executive director]~~. If the commissioner~~[executive director]~~ does not approve the transfer of domicile, the applicant insurer may request a hearing in accordance with KRS 304.2-310(2)(b).

(b) An applicant filing to become a domestic insurer in accordance with subsection (2) of this section shall include a notice of transfer of domicile to the Secretary of State and the articles, amended articles, or restated articles of incorporation in compliance with KRS 271B.2-020.

(c) An application filed by a domestic insurer to transfer its domicile to another state in accordance with subsection (3) of this section shall include a copy of the order approving the redomestication issued by the new state of domicile.

➔ Section 1350. KRS 304.24-600 is amended to read as follows:

(1) A domestic mutual insurer may convert to a stock insurer by amendment of its articles of incorporation and upon compliance with the requirements of KRS 304.24-600 to 304.24-625 and the applicable requirements of this subtitle and Subtitle 3 of this chapter.

(2) A domestic mutual insurer shall only convert to a stock insurer in accordance with a

1 plan of conversion approved by the commissioner~~[executive director]~~.

2 ➔ Section 1351. KRS 304.24-603 is amended to read as follows:

3 (1) The board of directors of the converting mutual shall adopt a resolution proposing  
4 the amendment of its articles of incorporation in accordance with KRS 304.24-080  
5 and proposing a plan of conversion.

6 (2) The plan of conversion shall:

7 (a) Describe the manner in which the proposed conversion shall occur and the  
8 insurer and any other business entity that will result from or be directly  
9 affected by the conversion, including the former mutual and any affiliate;

10 (b) Provide that the membership interests in the converting mutual shall be  
11 extinguished as of the effective date of the conversion;

12 (c) Require the fair and equitable distribution of aggregate consideration to the  
13 eligible members, upon the extinguishing of their membership interests, which  
14 shall be equal to the fair value of the converting mutual as determined under a  
15 fair formula:

16 1. Describe the manner in which the fair value of the converting mutual  
17 shall be determined or established;

18 2. Describe the form or forms of consideration that shall be distributed to  
19 the eligible members; and

20 3. Specify relevant classes, categories, or groups of eligible members, and  
21 describe the method or formula that shall be used for the equitable  
22 allocation of the aggregate consideration among the eligible members;

23 (d) Provide for the determination and preservation of the reasonable dividend  
24 expectations of eligible members and other policyholders with policies that  
25 provide for the distribution of policy dividends that shall be implemented  
26 through establishment of a closed block or other method acceptable to the  
27 commissioner~~[executive director]~~ in compliance with KRS 304.24-600 to



1 304.24-625;

2 (e) Specify the effective date of the plan of conversion and distributions to  
3 eligible members; and

4 (f) Include all other provisions that are necessary for, or material to, the  
5 implementation of the conversion.

6 (3) The plan of conversion may include any other provisions that the converting mutual  
7 deems necessary or reasonable.

8 ➔Section 1352. KRS 304.24-605 is amended to read as follows:

9 (1) The converting mutual shall file with the commissioner~~[executive-director]~~ an  
10 application for approval of the plan of conversion.

11 (2) The application shall consist of the following:

12 (a) The plan of conversion;

13 (b) A certificate of the secretary of the converting mutual regarding the adoption  
14 of the plan of conversion;

15 (c) A statement of the reasons for the proposed conversion and why it is in the  
16 best interests of the converting mutual and its eligible members, including an  
17 analysis of the risks and benefits to the converting mutual and its members  
18 and a comparison of the risks and benefits of reasonable alternatives to a  
19 conversion;

20 (d) A five (5) year business plan of the former mutual, including five (5) year  
21 financial projections, detailed descriptive narrative, and all relevant  
22 assumptions;

23 (e) Any plans or proposals that the former mutual or any affiliate company may  
24 have to raise additional capital through the issuance of stock or otherwise; and  
25 any other plans that the former mutual or any affiliate company may have to  
26 sell or otherwise issue stock to any person, including the adoption of any  
27 employee compensation or benefit plan under which stock may be issued;

- 1 (f) Any plans or proposals that the former mutual or any affiliate company may  
2 have to liquidate or dissolve any company, to sell any material assets, or to  
3 merge or consolidate with any person, or to make any other material change in  
4 investment policy, business, corporate structure, or management;
- 5 (g) Any plans or arrangement for a delayed distribution of consideration to  
6 eligible members, or restrictions on sale or transfer of stock or other  
7 securities;
- 8 (h) A plan of operation for any closed block established for the preservation of the  
9 reasonable dividend expectations of eligible members and other policyholders  
10 with policies that provide for the distribution of policy dividends;
- 11 (i) Copies of the current articles of incorporation and bylaws of the converting  
12 mutual;
- 13 (j) Copies of any proposed articles of incorporation and bylaws of the former  
14 mutual;
- 15 (k) A list of individuals who are or have been selected to become directors or  
16 officers of the former mutual and of any affiliate, or the individuals who  
17 perform or will perform duties customarily performed by a director or officer,  
18 including the following information:
- 19 1. The individual's principal occupation;
  - 20 2. All offices and positions the individual has held in the preceding five (5)  
21 years;
  - 22 3. Any criminal convictions of the individual;
  - 23 4. Information concerning any personal bankruptcy of the individual or the  
24 individual's spouse during the previous seven (7) years;
  - 25 5. Information concerning the supervision, rehabilitation, or liquidation of  
26 any insurer or the bankruptcy of any corporation or other entity of which  
27 the individual was an officer or director;

6. Information concerning any state or federal securities law allegations against the individual that resulted in a determination that the individual violated the state or federal securities law, a plea of nolo contendere, or a consent decree;

7. Information concerning the revocation of any state or federal license issued to the individual; and

8. Information as to whether the individual was refused a fidelity or other bond during the previous ten (10) years.

(l) A fairness opinion addressed to the board of directors of the converting mutual from a qualified independent financial advisor, that the provision of stock, cash, policy benefits, or other forms of consideration upon extinguishing the converting mutual's membership interests under the plan of conversion, is fair and equitable to the eligible members, as a group, from a financial point of view;

(m) An actuarial opinion and supporting memorandum;

(n) A description of the plans of the former mutual or its affiliates to assure that an active trading market for any stock or other securities distributed to eligible members will develop within a reasonable amount of time after the effective date of the plan of conversion and that eligible members who receive stock or other securities will be able to sell their stock or other securities, subject to any delayed distribution or transfer restrictions, at reasonable cost and effort.

These plans may consist of:

1. Appointing a registrar and transfer agent for the stock or other securities;
2. Making filings, applications, or registrations for the stock or other securities with the Federal Securities and Exchange Commission and with appropriate state securities regulators;
3. Listing the stock or other securities on a national or other securities

- 1 exchange;
- 2 4. Facilitating coverage of the stock or other securities by research analysts
- 3 and securing the commitment of at least one (1) market maker to make a
- 4 market in the stock or other securities;
- 5 5. Conducting an underwritten public offering of the same class of stock or
- 6 other securities, promptly following the effective date of the plan of
- 7 conversion, in order to facilitate the development of a public market;
- 8 and
- 9 6. Making available a procedure for eligible members holding small
- 10 numbers or amounts of stock or other securities to sell their stock or
- 11 other securities to the former mutual or an affiliate at market value
- 12 without the payment of brokerage commissions or similar fees, or to sell
- 13 their stock or other securities in the market through a broker with
- 14 discounted brokerage commissions or fees;
- 15 (o) Any additional information, documents, or materials that the converting
- 16 mutual deems necessary or reasonable; and
- 17 (p) Any other additional information, documents, or materials that the
- 18 commissioner~~[executive director]~~ may request in writing.
- 19 (3) (a) The actuarial opinion shall address whether:
- 20 1. The methodology or formulas used to determine the total aggregate
- 21 consideration to be distributed to eligible members is reasonable and
- 22 appropriate;
- 23 2. The methodology or formulas used to allocate consideration among the
- 24 eligible members is reasonable and appropriate;
- 25 3. The financial condition of the former mutual will not be adversely
- 26 diminished; and
- 27 4. If a closed block is used for the preservation of the reasonable dividend

1 expectations of eligible members and other policyholders with policies  
 2 that provide for the distribution of the policy dividends, the plan of  
 3 operation, and the sufficiency of the assets allocated to the closed block,  
 4 is reasonable.

5 (b) The actuarial opinion shall be provided by a qualified and independent actuary  
 6 who is a member of the American Academy of Actuaries. The opinion shall  
 7 be given in accordance with professional standards and practices generally  
 8 accepted by the actuarial profession and those other factors as the actuary  
 9 believes are reasonable and appropriate in the exercise of professional  
 10 judgment at the time the opinion is given.

11 (c) The opinion shall be supported by a memorandum of the actuary, describing  
 12 the calculations made and the assumptions used in the calculations.

13 ➔ Section 1353. KRS 304.24-607 is amended to read as follows:

14 (1) The commissioner~~executive director~~ shall have ninety (90) days to review the  
 15 plan of conversion after it is filed. Upon completion of the review, the  
 16 commissioner~~executive director~~ shall schedule a public hearing on the plan of  
 17 conversion.

18 (2) The commissioner~~executive director~~ shall hold a hearing upon the plan of  
 19 conversion in accordance with KRS 304.2-310.

20 (3) The converting insurer shall present evidence that the plan of conversion complies  
 21 with KRS 304.24-600 to 304.24-625.

22 (4) Persons wishing to make comments and submit information may submit written  
 23 statements prior to the public hearing and may appear and be heard at the hearing.  
 24 These comments shall be part of the record and shall be considered by the  
 25 commissioner~~executive director~~ before issuing an order on the plan of conversion.

26 (5) At least forty-five (45) days prior to the hearing date, the converting mutual shall  
 27 provide information regarding the hearing to the eligible members and its other

1 policyholders and certificate holders. The information provided shall include a brief  
 2 statement of the subject of the hearing, the date, time, and location of the hearing, a  
 3 description of members eligible to vote on the plan of conversion, and a statement  
 4 indicating the location at which the public portion of the application may be  
 5 examined. This information shall be provided by mail or by other means approved  
 6 by the commissioner~~{executive director}~~.

7 (6) Following the hearing, the commissioner~~{executive director}~~ shall, by order,  
 8 approve, conditionally approve, or disapprove the plan of conversion. The  
 9 commissioner~~{executive director}~~ may require, as a condition of approval of the  
 10 plan of conversion, modification of the proposed plan of conversion. The insurer  
 11 shall file the amendments required by the conditional approval within thirty (30)  
 12 days of the date of the order. The commissioner~~{executive director}~~ may grant an  
 13 extension for filing amendments for good cause shown. If the applicant does not  
 14 timely file the required amendments, the plan of conversion shall be deemed  
 15 disapproved.

16 ➔Section 1354. KRS 304.24-609 is amended to read as follows:

17 (1) The commissioner~~{executive director}~~ shall approve the plan of conversion if the  
 18 commissioner~~{executive director}~~ finds, following the hearing, that the plan of  
 19 conversion:

- 20 (a) Complies with the provisions of this chapter and all other applicable laws;
- 21 (b) Is fair and equitable to the eligible members and the other policyholders of the  
 22 converting mutual;
- 23 (c) Is actuarially reasonable and appropriate;
- 24 (d) Will not jeopardize the financial stability of the former mutual or prejudice the  
 25 interest of its policyholders; and
- 26 (e) Provides that the former mutual shall be able to satisfy the requirements for  
 27 issuance of a certificate of authority to write the kinds of insurance for which

1 the converting mutual is presently authorized.

2 (2) The commissioner~~[executive director]~~ shall, at the converting mutual's expense,  
 3 hire accountants, actuaries, attorneys, financial advisors, investment bankers, and  
 4 other experts as may be necessary to assist the commissioner~~[executive director]~~ in  
 5 reviewing all matters under KRS 304.24-600 to 304.24-625 that are related to the  
 6 plan of conversion and the application. The commissioner~~[executive director]~~ may  
 7 at any time require the converting mutual to deposit an amount of money with the  
 8 department~~[office]~~ in anticipation of expenses to be incurred by the  
 9 commissioner~~[executive director]~~ under this subsection.

10 (3) The commissioner~~[executive director]~~ may consider the effect of any action taken  
 11 by the converting insurer within a three (3) year period immediately prior to the  
 12 filing of the plan of conversion if the action taken by the insurer has a material  
 13 effect on the fairness and equity of the plan of conversion.

14 ➔Section 1355. KRS 304.24-611 is amended to read as follows:

15 (1) The plan of conversion and the proposed amendment to the articles of incorporation  
 16 of the converting mutual shall be submitted to a vote of the members of the  
 17 converting mutual, as provided in this section and in KRS 304.24-095.

18 (2) The meeting of members shall be held no later than ninety (90) days after the  
 19 issuance of the commissioner's~~[executive director's]~~ order of approval of the plan  
 20 of conversion or after the filing of all amendments in compliance with the order of  
 21 conditional approval of the plan of conversion.

22 (3) The converting mutual shall give written notice of the right to vote on the plan of  
 23 conversion to the members of the converting mutual entitled to vote. The notice  
 24 shall be accompanied by explanatory information concerning the plan of conversion  
 25 and may be accompanied by proxy solicitation materials. The notice and  
 26 accompanying information and materials shall not be provided to the members until  
 27 approved by the commissioner~~[executive director]~~. The notice and accompanying

1 materials shall include:

- 2 (a) A brief statement of the subject of the meeting;
  - 3 (b) The date, time, and location of the meeting;
  - 4 (c) A description of the member's right to attend and participate in the meeting;
  - 5 (d) A description of the nature and amount of consideration that will be provided
  - 6 to the eligible members upon completion of the conversion;
  - 7 (e) If reasonably ascertainable by the converting mutual, a description of the form
  - 8 and amount or approximate amount of consideration to be provided to the
  - 9 particular member to whom the notice is addressed;
  - 10 (f) A copy of the plan of conversion and summary of the plan; and
  - 11 (g) A reference to the applicable statutory provisions.
- 12 (4) The notice required by subsection (3) of this section shall achieve a minimum score
- 13 of forty (40) on the Flesch reading ease test or an equivalent score on a comparable
- 14 test approved by the commissioner~~executive director~~.
- 15 (5) The notice shall be mailed, or provided by some other method or methods as may
- 16 be approved by the commissioner~~executive director~~, not less than thirty (30) days
- 17 before the date of the meeting of members to vote on the plan of conversion.
- 18 (6) Only persons who are members of the converting mutual on both the date the
- 19 converting mutual's board of directors adopts the resolution proposing the plan of
- 20 conversion and the record date for the meeting established by the board of directors
- 21 shall be entitled to vote on the plan of conversion and the proposed amendment to
- 22 the articles of incorporation of the converting mutual. Each voting member shall be
- 23 entitled to vote in accordance with KRS 304.24-210.
- 24 (7) Notwithstanding KRS 304.24-210, a member may vote by proxy only if:
- 25 (a) The proxy was solicited and obtained from the member for the express and
  - 26 sole purpose of voting on the plan of conversion, amendments to the articles
  - 27 of incorporation and bylaws, and any other matter materially related to the



1 plan of conversion; and

2 (b) The proxy solicitation materials were provided to the commissioner~~executive~~  
3 ~~director~~ prior to sending the materials to the members.

4 (8) The plan of conversion and the proposed amendment to the converting mutual's  
5 articles of incorporation shall be approved by the members upon receiving the  
6 affirmative votes of at least two-thirds (2/3) of the members voting at the meeting in  
7 person or by proxy.

8 ➔Section 1356. KRS 304.24-615 is amended to read as follows:

9 (1) The total aggregate consideration to be distributed to the eligible members shall be  
10 determined under a fair formula. The total aggregate consideration shall not be less  
11 than the converting mutual's total surplus or surplus as regards policyholders; plus  
12 the value of all nonadmitted assets; plus a reasonable present equity in reserves, if  
13 any; minus any adjustments for contributed or borrowed surplus.

14 (2) The consideration to be distributed to the eligible members shall be cash, stock, or  
15 other securities of the former mutual or of an affiliate, additional paid up insurance  
16 or annuity benefits, or any combination of these forms of consideration or other  
17 forms of consideration described in the plan of conversion and approved by the  
18 commissioner~~executive director~~.

19 (3) The form of consideration to be distributed to a class, category, or group of eligible  
20 members may differ from the form of consideration to be distributed to another  
21 class, category, or group of eligible members. The choice of the form of  
22 consideration may take into account such factors as the type of policies with respect  
23 to which the consideration is being distributed, the country or state of residence or  
24 tax status of the eligible members, the length of time that eligible members have  
25 been members of the converting mutual, or other appropriate factors or  
26 circumstances described in the plan of conversion.

27 (4) Distribution of all or part of the consideration to some or all of the eligible members

may be delayed, or restrictions on sale or transfer of any stock or other securities to be distributed to eligible members may be required, for a reasonable period of time following the effective date of the conversion. That period of time shall not exceed six (6) months, unless approved by the commissioner~~[executive director]~~.

➔Section 1357. KRS 304.24-617 is amended to read as follows:

In determining whether the method or formula in the plan of conversion is fair and equitable, the commissioner~~[executive director]~~ may consider the following factors:

- (1) Voting rights;
- (2) Number of eligible members;
- (3) Length of membership in the converting mutual;
- (4) Premiums paid by members;
- (5) Policy limits;
- (6) Risk of line of insurance;
- (7) Sources of the proportionate contributions to historical surplus, based on such groupings, classification, historical information, assumptions, and projections as are actuarially sound and reasonable;
- (8) For a converting mutual that is a property and casualty company, the net earned premiums each eligible member has paid to the converting mutual, compared to the total net earned premiums paid by all eligible members, in each case during the period of time specified in the plan of conversion; and
- (9) Any other relevant factors the commissioner~~[executive director]~~ may deem appropriate.

➔Section 1358. KRS 304.24-619 is amended to read as follows:

- (1) No dividend preservation provisions shall provide in any way or substitute for the distribution of consideration to eligible members upon extinguishing their membership interests.
- (2) Any dividend preservation provision may be limited to participating individual life

1 insurance policies and participating individual annuity contracts in force or deemed  
 2 to be in force by the plan of conversion on the effective date of the plan of  
 3 conversion for which the converting mutual insurer has an experience-based  
 4 dividend scale due, paid, or accrued by action of the board of directors of the  
 5 converting mutual in the year in which the plan of reorganization is adopted, except  
 6 that:

7 (a) Policies that would be included but for the fact that their recent issuance  
 8 results in no dividends for an initial period, may be included;

9 (b) Policies that are in force as extended term insurance may be included; and

10 (c) Other categories of policies and benefits not described in this subsection may  
 11 be included or excluded with approval of the commissioner~~executive~~  
 12 ~~director~~.

13 ➔Section 1359. KRS 304.24-621 is amended to read as follows:

14 (1) The provisions of this section apply if a closed block is used for the preservation of  
 15 the reasonable dividend expectations of eligible members and other policyholders.

16 (2) The converting mutual shall prepare a written plan of operation for the closed block,  
 17 consistent with the requirements of this section and the other applicable  
 18 requirements of KRS 304.24-600 to 304.24-625.

19 (3) The closed block shall be operated for the exclusive benefit of policies and  
 20 contracts included in it. No costs or expenses incurred in connection with the  
 21 conversion shall be charged to the closed block.

22 (4) The assets allocated to the closed block, together with the revenue from the closed  
 23 block, shall be calculated to be reasonably sufficient to support the business in the  
 24 closed block until the last policy in the closed block has terminated, including  
 25 payment of claims and those expenses and taxes as are specified in the plan of  
 26 conversion, and to provide for continuation of dividend scales in effect on the  
 27 adoption date of the plan of conversion, if the experience underlying those scales

- 1 continues and for appropriate adjustments in the scales if the experience changes.
- 2 (5) The assets to a closed block shall be specified in the plan of operation and must  
3 consist of:
- 4 (a) A list of designated assets of the converting mutual's general account or  
5 specified segments, which list shall change periodically to reflect the  
6 acquisition and disposition of assets;
- 7 (b) A designated portion of each asset of the converting mutual's general account  
8 or specified segments thereof, which portion shall change periodically to  
9 reflect the cash flows of the closed block; or
- 10 (c) Assets designated by a combination of the methods described in paragraphs  
11 (a) and (b) of this subsection.
- 12 (6) The plan of operation shall specify which of those methods of assignment of closed  
13 block assets is being used and shall set forth the methods by which the designations  
14 referred to in subsection (5) of this section are changed during the course of closed  
15 block operations.
- 16 (7) The former mutual shall submit to the commissioner~~executive director~~ annual  
17 reports, in a form acceptable to the commissioner~~executive director~~, that account  
18 for and describe the operations of the closed block; and as specified in the plan of  
19 operation provide for annual reviews of, and reports and opinions on, the closed  
20 block by an independent actuary.
- 21 (8) The plan of operation shall provide for the conditions under which the former  
22 mutual may terminate the closed block.
- 23 (9) The former mutual shall not distribute any residual assets of the closed block until  
24 the plan for distribution of the residual assets is approved by the  
25 commissioner~~executive director~~.
- 26 ➔Section 1360. KRS 304.24-623 is amended to read as follows:
- 27 (1) Except as specifically provided in the plan of conversion, for a period of five (5)

years following the effective date of the conversion, no person or persons acting in concert, other than the former mutual, any affiliate, any employee benefit plans, or trusts sponsored by the former mutual or affiliate, shall directly or indirectly offer to acquire or acquire in any manner the beneficial ownership of five percent (5%) or more of any class of a voting security of the former mutual or any affiliate company without the prior approval by the commissioner~~[executive director]~~ of a statement filed by that person with the commissioner~~[executive director]~~. The statement shall contain the information required by KRS 304.37-120(2) and any other information required by the commissioner~~[executive director]~~.

(2) The commissioner~~[executive director]~~ shall not approve the acquisition if the commissioner~~[executive director]~~ finds that:

- (a) The requirements of KRS 304.37-120(4)(a) have not been satisfied;
- (b) The acquisition will frustrate the fair and equitable plan of conversion as approved by the members and the commissioner~~[executive director]~~;
- (c) The acquisition or change of control will result in unjust enrichment of the acquiring persons to the detriment of the eligible members of the converting mutual; and
- (d) The acquisition would not be in the best interest of the present and future policyholders of the former mutual, without regard to any interest of policyholders as shareholders of the former mutual or any affiliate company.

(3) The requirements of this section shall be in addition and supplemental to any other filings or approvals required by this chapter or otherwise by law.

➔Section 1361. KRS 304.24-625 is amended to read as follows:

During the one (1) year period following the effective date of the plan of conversion, neither the former mutual nor any affiliate company shall sell or issue, or adopt any plan or benefit program providing for the sale or issuance of, any stock or other equity security except:

- 1 (1) As disclosed in the approved plan of conversion; or
- 2 (2) As otherwise approved by the commissioner~~[executive director]~~, upon a finding
- 3 that the stock transaction:
- 4 (a) Will not frustrate the plan of conversion as approved by the members and the
- 5 commissioner~~[executive director]~~; and
- 6 (b) Is not adverse to the best interests of the policyholders of the former mutual,
- 7 without regard to any interests of policyholders as shareholders of the former
- 8 mutual or any affiliate company.
- 9 ➔Section 1362. KRS 304.25-020 is amended to read as follows:
- 10 (1) When used in this subtitle, the following terms shall mean and include the
- 11 following:
- 12 (a) Acting director. Acting director means an acting director elected or appointed
- 13 in accordance with this subtitle.
- 14 (b) Acting officer. Acting officer means an acting officer appointed in accordance
- 15 with this subtitle.
- 16 (c) Acute emergency. Acute emergency means a period, as formally declared and
- 17 proclaimed by the Governor of this state, in which, by reason of loss of life,
- 18 epidemic disease, destruction or damage of property, contamination of
- 19 property by radiological, chemical or bacteriological means, or disruption of
- 20 the means of transportation or communication, resulting from an attack, it is
- 21 impossible or impractical for the business of insurance in this state to be
- 22 conducted in strict accord with the provision of law or charter applicable
- 23 thereto.
- 24 (d) Attack. Attack means any attack, actual or imminent, or series of attacks by an
- 25 enemy or a foreign nation upon the United States causing, or which may
- 26 cause, substantial damage or injury to civilian property or persons in the
- 27 United States in any manner by sabotage or by the use of bombs, shell fire, or

1 atomic, radiological, chemical, bacteriological or biological means or other  
2 weapons or processes.

3 (e) Board. Board means the board of directors, board of trustees, committee or  
4 similar body having control of the affairs of an insurance organization.

5 (f) Charter. Charter means the certificate of organization or incorporation or  
6 special law incorporating a corporation together with its bylaws, or the  
7 agreement establishing a fund or association together with its constitution and  
8 bylaws.

9 (g) Commissioner~~[Executive director]~~. Commissioner~~[Executive director]~~ means  
10 the commissioner~~[executive director]~~ of the Department of Insurance or  
11 person duly designated to exercise the powers of that department~~[office]~~  
12 during an attack or acute emergency.

13 (h) Director. Director means a director, trustee or member of a board.

14 (i) Domestic organization. Domestic organization means any insurance  
15 organization which is domiciled in this state.

16 (j) Insurance organization. Insurance organization means any insurer, rating  
17 organization, service or advisory organization, joint underwriting association,  
18 which is subject, in whole or in part, to the insurance laws of this state.

19 (k) Officer. Officer means an officer of a domestic insurance organization.

20 (l) Quorum. Quorum means the minimum number of directors required by  
21 charter and bylaw, exclusive of the provisions of this subtitle, to be present for  
22 valid action to be taken at a meeting of a board with respect to each particular  
23 item of business which may come before such meeting.

24 (2) This subtitle does not and shall not be construed to limit the powers of, or permit or  
25 require, any insurance organization which is not domiciled in this state or of any  
26 branch office, or agents of such insurance organization, or the directors, officers,  
27 members, policyholders, or stockholders of any such organization to act, or fail to

1 act, in such fashion as would violate the laws of the jurisdiction wherein such  
2 organization has its domicile.

3 ➔Section 1363. KRS 304.25-030 is amended to read as follows:

- 4 (1) With the approval of the commissioner~~executive director~~, any domestic  
5 organization may, at any time, adopt, in the same manner as in the case of ordinary  
6 bylaws, emergency bylaws to become operative during a period of acute emergency.  
7 Emergency bylaws may contain provisions with respect to the number of directors  
8 capable of acting which shall constitute its board, the number of such directors  
9 which shall constitute a quorum at a meeting of the board, the number of votes  
10 necessary for action by such board, the manner in which vacancies on the board  
11 shall be filled, the line of succession of its officers, and the interim management of  
12 the affairs of the insurance organization; such provisions, if approved by the  
13 commissioner~~executive director~~, need not comply with the requirement of the  
14 charter of such domestic organization or of the insurance or incorporation laws of  
15 this state.

- 16 (2) KRS 304.25-040 and subsections (2) to (6), inclusive, of KRS 304.25-050, shall not  
17 be applicable during a period of acute emergency to any domestic organization  
18 operating in accordance with and under emergency bylaws theretofore approved by  
19 the commissioner~~executive director~~.

20 ➔Section 1364. KRS 304.25-040 is amended to read as follows:

- 21 (1) Notwithstanding any provision of its charter, any domestic insurance organization,  
22 without complying with any provision of law requiring approval, or application for  
23 approval, of a change of location of its principal office may, from time to time,  
24 change the location thereof during an acute emergency to a suitable location within  
25 the United States, and may carry on its business at such new location during such  
26 acute emergency, and for a reasonable time thereafter. Any insurance organization  
27 which changes the location of its principal office during an acute emergency shall



1 notify the commissioner~~[executive director]~~ thereof in writing as soon as practical,  
2 stating the address of the new location, the address of the former location, and the  
3 dates when business is ceasing at the former location and commencing at the latter  
4 location.

5 (2) Notwithstanding any contrary provision of law or its charter, if at any time during  
6 an acute emergency affecting any domestic insurance organization, no person  
7 otherwise empowered to call meetings of the board is capable of acting, a meeting  
8 thereof may be called by any director or acting director or if no director or acting  
9 director is capable of acting, by any officer or acting officer. If it shall be  
10 impractical or impossible to give notice of a meeting of the board in the manner  
11 prescribed by charter and law, other than this subtitle, the person calling such a  
12 meeting may give notice thereof by making such reasonable efforts as  
13 circumstances may permit to notify each director and acting director of the time and  
14 place of the meeting, but need not specify the purposes thereof. Failure of any  
15 director or acting director to receive actual notice of a meeting of directors and  
16 acting directors shall not affect the power of the directors and acting directors  
17 present at such meeting to exercise the powers of an emergency board of directors  
18 as prescribed in this section. Nothing in this subtitle shall be construed as requiring  
19 a meeting of the board of such an organization to be convened in any manner  
20 different from that prescribed by its charter and by the provisions of law other than  
21 this subtitle.

22 (3) If three (3) or more directors and acting directors of any domestic insurance  
23 organization are present at any meeting of its board duly convened during an acute  
24 emergency affecting such domestic insurance organization, they shall constitute its  
25 emergency board of directors which, notwithstanding any contrary provision of law  
26 or of its charter, shall have the power, subject to the limitations prescribed by this  
27 subtitle, by a majority of those present, to take any and every action which may be

1 necessary to enable such domestic insurance organization to meet the exigencies of  
2 the acute emergency and conduct its business during such period, but no other  
3 powers. The powers of an emergency board of directors shall include, but shall not  
4 be limited to, the following powers:

5 (a) Fill vacancies and absentees. At any meeting, to elect such acting directors as  
6 it may deem necessary, without regard to the number of directors which would  
7 otherwise be required, to serve in any positions on such board which are  
8 vacant or in place of any directors or acting directors who are absent from  
9 such meeting, but not to elect any director on a permanent basis.

10 (b) Acting officers and duties. To elect such acting officers as it may deem  
11 necessary, without regard to the number of officers which would otherwise be  
12 required, to serve in any offices which are vacant or in place of any officers or  
13 acting officers who fail to appear and assume their duties, to fix the  
14 compensation and determine the powers and duties of acting officers and to  
15 remove acting officers but not to remove any officer or to fill any vacancy on  
16 a permanent basis or to cause the insurance organization to enter into any  
17 contract of employment for a term in excess of one (1) year.

18 (c) Change of location. To cause the insurance organization to change the  
19 location of its principal office, pursuant to this section, or any of its places of  
20 business, and to authorize such action as it may deem appropriate to acquire  
21 space and facilities at new locations, but not to acquire for use of its principal  
22 office property in fee or for a term in excess of one (1) year.

23 (d) Postpone meetings. To postpone any meeting of the stockholders,  
24 policyholders or members or directors of such organization if, in the judgment  
25 of a majority of the members of such emergency board of directors, it would  
26 be impracticable to hold such meeting at the time it would otherwise have  
27 been held or conducted.

- 1 (e) Call meetings. If it shall appear to an emergency board of directors that a  
 2 quorum of the board cannot be assembled within a reasonable time, to call a  
 3 meeting of the stockholders, policyholders or members of the insurance  
 4 organization to be held as soon as the circumstances may reasonably permit, at  
 5 a place to be designated by the emergency board of directors within this state  
 6 or a contiguous state, for the purpose of electing directors to fill vacancies on  
 7 the board, but for no other purpose, and to propose nominees for such  
 8 election. Any such meetings of stockholders, policyholders or members shall  
 9 be held upon notice given in accordance with the charter of the organization  
 10 and applicable law other than this section.
- 11 (4) As soon as practicable after each meeting of an emergency board of directors, the  
 12 person who presided thereat shall notify the commissioner~~executive director~~ in  
 13 writing of the time and place of such meeting, of the manner in which notice thereof  
 14 was given, of the persons present and of all actions taken at such meeting.
- 15 (5) No person prohibited by law or by the charter of a domestic insurance organization  
 16 from serving as a member of its board shall be eligible to serve as an acting director  
 17 except that no person shall be disqualified to serve as an acting director by reason of  
 18 his or her not being a stockholder, policyholder or member of such insurance  
 19 organization, by reason of his or her not being a resident of this state or of a  
 20 contiguous state, or by reason of the number of directors or acting directors who are  
 21 officers, acting officers or employees of the insurance organization. Any person  
 22 may serve as an acting director of a fund who is a director, acting director, officer or  
 23 acting officer of an organization which is a party to the agreement creating the fund.  
 24 No oath of acting directors shall be required.
- 25 (6) Acting directors elected under this section or appointed under KRS 304.25-060  
 26 shall be entitled to vote at all meetings of emergency board of directors equally with  
 27 directors. Acting directors shall not be entitled to take part in the deliberations or to

1 vote at any meeting of the board which is duly convened in accordance with the  
 2 applicable provisions of its charter and of law other than this subtitle and at which a  
 3 quorum is present. Each acting director shall serve until the director or acting  
 4 director in whose place he or she was elected or appointed shall attend the meeting  
 5 of the board or until the director is duly elected to fill the vacancy in which such  
 6 acting director has been serving, whichever event occurs earlier. An acting director  
 7 shall be entitled to the compensation, if any, payable to a director.

8 (7) Acting officers elected pursuant to this section shall have powers and duties and  
 9 receive such compensation as may from time to time be determined by the  
 10 emergency board of directors. Each acting officer shall serve until the officer in  
 11 whose place he or she was elected shall appear and assume his or her duties or until  
 12 his or her successor officer or acting officer shall be elected, whichever event  
 13 occurs earlier.

14 (8) This section shall not be deemed applicable during a period of acute emergency to  
 15 any domestic organization operating in accordance with and under emergency  
 16 bylaws theretofore approved by the commissioner~~[executive director]~~.

17 ➔Section 1365. KRS 304.25-050 is amended to read as follows:

18 (1) Designate additional acting directors. If at any time during an acute emergency, the  
 19 number of directors or acting directors of a domestic insurance organization who  
 20 are capable of acting shall be less than three (3), as determined by the  
 21 commissioner~~[executive director]~~ after a reasonable investigation, the  
 22 commissioner~~[executive director]~~ shall have the power to designate additional  
 23 acting directors in such number as will bring to three (3) the number of directors  
 24 and acting directors who are capable of acting.

25 (2) Resolve controversies. To resolve controversy as to the power of any group of  
 26 persons purporting to act as an emergency board of directors so to act, the  
 27 commissioner~~[executive director]~~ shall, upon a determination that such action will

1       tend to promote the safe and sound and orderly conduct of the business of any  
 2       domestic insurance organization, have power to issue orders declaring that any such  
 3       group shall or shall not have the powers of an emergency board of directors, or  
 4       confirming, modifying or vacating in whole or in part any action taken or  
 5       purportedly taken by any such group or by removing any acting director.

6       (3) (a) Declare provisions of law operative or inoperative. At any time after an attack,  
 7       upon his determination that such action will tend to promote certainty as to the  
 8       powers of insurance organizations or individuals pursuant to this subtitle or  
 9       that such action is desirable to enable insurance organizations to take  
 10      preparatory precautions prior to the occurrence of an acute emergency, the  
 11      commissioner~~executive director~~ shall have power to declare that any  
 12      provision of this subtitle which he may specify shall be operative with respect  
 13      to any domestic insurance organization or to the Kentucky business of any  
 14      other insurance organization which he may designate. Upon such declaration  
 15      such organization and its directors, officers, acting directors and acting  
 16      officers shall have all powers conferred by this subtitle. The failure of the  
 17      commissioner~~executive director~~ so to declare shall not be deemed to limit  
 18      the powers of any organization or its directors, officers, acting directors or  
 19      acting officers where an acute emergency exists in fact.

20      (b) At any time after the commencement of an acute emergency or after the  
 21      commissioner~~executive director~~ shall have declared any provision of this  
 22      subtitle operative under this subsection upon his determination that an  
 23      insurance organization is able, in whole or in part, to carry on its business in  
 24      compliance with its charter and the laws, other than this subtitle, the  
 25      commissioner~~executive director~~ shall have power to declare that any  
 26      provision of this subtitle which he may specify shall be inoperative with  
 27      respect to any domestic insurance organization or to the Kentucky business of

1           any other insurance organization which he may designate. Upon such  
 2           declaration, such organization shall be governed by its charter and the  
 3           provisions of law other than this subtitle, except insofar as they remain  
 4           inoperative.

5   (4) Possession of business and property. Upon the determination that, as a result of an  
 6       acute emergency, the business and affairs of an insurance organization cannot  
 7       otherwise be conducted in a safe and sound manner, the commissioner~~[executive~~  
 8       ~~director]~~ may forthwith take possession of the business and property of the  
 9       insurance organization within this state or, if a domestic insurance organization, its  
 10      business and property wherever situated. This subtitle shall be applicable in any  
 11      case in which the commissioner~~[executive director]~~ takes possession of an  
 12      insurance organization under this subsection as though the insurance organization  
 13      were an insurer of which the commissioner~~[executive director]~~ had taken  
 14      possession under this subtitle, except that no such provision shall be applicable  
 15      which the commissioner~~[executive director]~~ shall have declared inapplicable under  
 16      this subsection. The commissioner~~[executive director]~~ shall have power to declare  
 17      inapplicable any such provision upon his determination that the same is  
 18      inappropriate or unnecessary to protect the interest of the public or the stockholders  
 19      or creditors of the insurance organization, in view of the acute emergency and the  
 20      nature of the organization.

21   (5) When powers exercised. The powers given the commissioner~~[executive director]~~  
 22       by subsections (2) and (4) of this section shall be exercised by him only in the event  
 23       that there is no court of competent jurisdiction available to which an application can  
 24       be made for an order permitting him to exercise such powers with respect to a  
 25       particular insurance organization. The powers conferred by subsection (4) of this  
 26       section shall not be exercised in a case of an insurance organization which is not  
 27       insolvent within the meaning of this subtitle, unless the commissioner~~[executive~~

1       ~~director~~] finds that such insurance organization lacks personnel able to manage its  
2       business in the interest of the public, stockholders and policyholders.

- 3       (6) Regulations. The commissioner~~[executive-director]~~ shall have power to issue  
4       general and specific regulations, directives and orders consistent with and in  
5       furtherance of the purpose of this subtitle.

6       ➔Section 1366. KRS 304.25-060 is amended to read as follows:

- 7       (1) Presumption. In any action or proceeding it shall be presumed that an acute  
8       emergency existing within this state constitutes an acute emergency affecting every  
9       insurance organization doing business within this state.

- 10      (2) Powers of board. During an acute emergency the board of a domestic insurance  
11      organization which has adopted emergency bylaws approved by the  
12      commissioner~~[executive-director]~~ shall have all of the powers conferred by such  
13      bylaws, and no other or different powers with respect to the subject matter of this  
14      subtitle, and the board of a domestic insurance organization which has not adopted  
15      emergency bylaws approved by the commissioner~~[executive-director]~~ shall have all  
16      of the powers of an emergency board of directors as the same are provided for under  
17      this subtitle.

18      ➔Section 1367. KRS 304.26-020 is amended to read as follows:

19      The term "equity security" when used in this subtitle means:

- 20      (1) Any stock or similar security; or  
21      (2) Any security convertible, with or without consideration, into such a security, or  
22      carrying any warrant or right to subscribe to or purchase such a security; or  
23      (3) Any such warrant or right; or  
24      (4) Any other security which the commissioner~~[executive-director]~~ deems to be of  
25      similar nature and considers necessary or appropriate, by such rules and regulations  
26      as the commissioner~~[he]~~ may prescribe in the public interest or for the protection of  
27      investors, to treat as an equity security.

➔ Section 1368. KRS 304.26-030 is amended to read as follows:

Every person who is directly or indirectly the beneficial owner of more than ten percent (10%) of any class of any equity security of a domestic stock insurer, or who is a director or an officer of such insurer, shall:

(1) File in the office of the commissioner~~[executive director]~~ within ten (10) days after he or she becomes such beneficial owner, director or officer, a statement, in such form as the commissioner~~[executive director]~~ may prescribe, of the amount of all equity securities of such insurer of which he or she is the beneficial owner; and

(2) Within ten (10) days after the close of each calendar month thereafter, if there has been a change in such ownership during such month, file in the office of the commissioner~~[executive director]~~ a statement, in such form as the commissioner~~[executive director]~~ may prescribe, indicating his or her ownership at the close of the calendar month and such changes in his or her ownership as have occurred during such calendar month.

➔ Section 1369. KRS 304.26-040 is amended to read as follows:

(1) For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director, or officer by reason of his or her relationship to such insurer, any profit realized by him or her from any purchase and sale, or any sale and purchase, of any equity security of such insurer within any period of less than six (6) months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the insurer, irrespective of any intention on the part of such beneficial owner, director, or officer in entering into such transaction or holding the security purchased or of not repurchasing the security sold for a period exceeding six (6) months.

(2) Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the insurer, or by the owner of any security of the insurer



1 in the name and in behalf of the insurer if the insurer fails or refuses to bring such  
 2 suit within sixty (60) days after request or fails diligently to prosecute the same  
 3 thereafter; but no such suit shall be brought more than two (2) years after the date  
 4 such profit was realized.

5 (3) This section shall not be construed to cover any transaction where such beneficial  
 6 owner was not such both at the time of the purchase and sale, or the sale and  
 7 purchase, of the security involved, or any transaction or transactions which the  
 8 commissioner~~executive director~~ by rules and regulations may exempt as not  
 9 comprehended within the purpose of this section.

10 ➔Section 1370. KRS 304.26-050 is amended to read as follows:

11 (1) It is unlawful for any such beneficial owner, director or officer, directly or  
 12 indirectly, to sell any equity security of such insurer if the person selling the security  
 13 or his or her principal:

14 (a) Does not own the security sold, or

15 (b) If the owner of the security does not deliver it against such sale within twenty  
 16 (20) days thereafter, or does not within five (5) days after such sale deposit it  
 17 in the mails or other usual channels of transportation, but no person shall be  
 18 deemed to have violated this section if he or she proves that notwithstanding  
 19 the exercise of good faith he or she was unable to make such delivery or  
 20 deposit within such time, or that to do so would cause undue inconvenience or  
 21 expense.

22 (2) The commissioner~~executive director~~ shall establish, and from time to time amend,  
 23 regulations with regard to proxies, consents, or authorizations in respect of  
 24 securities issued by any domestic stock insurer, such regulations to conform to those  
 25 prescribed by the National Association of Insurance Commissioners.

26 ➔Section 1371. KRS 304.26-060 is amended to read as follows:

27 (1) The provisions of KRS 304.26-040 do not apply to any purchase and sale, or sale

1 and purchase, and the provisions of subsection (1) of KRS 304.26-050 do not apply  
 2 to any sale, of an equity security of a domestic stock insurer not then or theretofore  
 3 held by him or her in an investment account, by a dealer in the ordinary course of  
 4 his or her business and incident to the establishment or maintenance by him or her  
 5 of a primary or secondary market (otherwise than on an exchange as defined in the  
 6 Securities Exchange Act of 1934) for such security.

- 7 (2) The commissioner~~[executive director]~~ may, by such rules and regulations as he or  
 8 she deems necessary or appropriate in the public interest, define and prescribe terms  
 9 and conditions with respect to securities held in an investment account and  
 10 transactions made in the ordinary course of business and incident to the  
 11 establishment or maintenance of a primary or secondary market.

12 ➔ Section 1372. KRS 304.26-070 is amended to read as follows:

13 The provisions of KRS 304.26-030 and 304.26-040 and subsection (1) of KRS 304.26-  
 14 050, do not apply to foreign or domestic arbitrage transactions unless made in  
 15 contravention of such rules and regulations as the commissioner~~[executive director]~~ may  
 16 adopt in order to carry out the purposes of this subtitle.

17 ➔ Section 1373. KRS 304.26-090 is amended to read as follows:

- 18 (1) The commissioner~~[executive director]~~ shall have the power to make such rules and  
 19 regulations as may be necessary for the execution of the functions vested in him or  
 20 her by KRS 304.26-030 to 304.26-080, inclusive, and may for such purpose classify  
 21 domestic stock insurers, securities and other persons or matters within his or her  
 22 jurisdiction.

- 23 (2) No provision of KRS 304.26-030 to 304.26-050, inclusive, imposing any liability  
 24 shall apply to any act done or omitted in good faith in conformity with any rule or  
 25 regulation of the commissioner~~[executive director]~~, notwithstanding that such rule  
 26 or regulation may, after such act or omission, be amended or rescinded or  
 27 determined by judicial or other authority to be invalid for any reason.

➔Section 1374. KRS 304.27-060 is amended to read as follows:

- (1) Twenty-five (25) or more persons domiciled in this state may organize a domestic reciprocal insurer and make application to the commissioner~~{executive-director}~~ for a certificate of authority to transact insurance.
- (2) The proposed attorney shall fulfill the requirements of and shall execute and file with the commissioner~~{executive-director}~~ when applying for a certificate of authority, a declaration setting forth:
  - (a) The name of the insurer;
  - (b) The location of the insurer's principal office, which shall be the same as that of the attorney and shall be maintained within this state;
  - (c) The kinds of insurance proposed to be transacted;
  - (d) The names and addresses of the original subscribers;
  - (e) The designation and appointment of the proposed attorney and a copy of the power of attorney;
  - (f) The names and addresses of the officers and directors of the attorney, if a corporation, or its members, if a firm;
  - (g) The powers of the subscribers' advisory committee; and the names and terms of office of the members thereof;
  - (h) A copy of the subscribers' agreement;
  - (i) That all moneys paid to the reciprocal insurer shall, after deducting therefrom any sum payable to the attorney, be held in the name of the insurer and for the purposes specified in the subscribers' agreement;
  - (j) A statement that each of the original subscribers has in good faith applied for insurance of a kind proposed to be transacted, and that the insurer has received from each such subscriber the full premium or premium deposit required for the policy applied for, for a term of not less than six (6) months at an adequate rate theretofore filed with the commissioner~~{executive-director}~~;

(k) A statement of the financial condition of the insurer, a schedule of its assets, and a statement that the surplus as required by KRS 304.3-120 is on hand; and

(l) A copy of each policy, indorsement and application form it then proposes to issue or use.

(3) The declaration shall be acknowledged by the attorney in the manner required for the acknowledgment of deeds.

➔Section 1375. KRS 304.27-070 is amended to read as follows:

(1) The certificate of authority of a reciprocal insurer shall be issued to its attorney in the name of the insurer.

(2) The commissioner~~[executive director]~~ may refuse, suspend or revoke the certificate of authority, in addition to other grounds therefor, including those provided in Subtitles 2 and 3 of this chapter, for failure of the attorney to comply with any applicable provision of this code.

➔Section 1376. KRS 304.27-080 is amended to read as follows:

(1) The rights and powers of attorney of a reciprocal insurer shall be as provided in the power of attorney given it by the subscribers.

(2) The power of attorney must set forth:

(a) The powers, duties and compensation of the attorney;

(b) That the attorney is empowered to accept service of process on behalf of the insurer in actions against the insurer upon contracts exchanged;

(c) The general services to be performed by the attorney;

(d) The maximum amount to be deducted from advance premiums or deposits to be paid to the attorney and the general items of expense in addition to losses, to be paid by the insurer; and

(e) Except as to nonassessable policies, a provision for a contingent several liability of each subscriber in a specified amount which amount shall be not less than one (1) nor more than ten (10) times the premium or premium

1 deposit stated in the policy.

2 (3) The power of attorney may:

3 (a) Provide for the right of substitution of the attorney and revocation of the  
4 power of attorney and rights thereunder;

5 (b) Impose such restrictions upon the exercise of the power as are agreed upon by  
6 the subscribers;

7 (c) Provide for the exercise of any right reserved to the subscribers directly or  
8 through their advisory committee; and

9 (d) Contain other lawful provisions deemed advisable.

10 (4) The terms of any power of attorney or agreement collateral thereto shall be  
11 reasonable and equitable, and no such power or agreement, or any amendment  
12 thereof, shall be used or be effective in this state until approved by the  
13 commissioner~~executive director~~.

14 ➔Section 1377. KRS 304.27-100 is amended to read as follows:

15 (1) Concurrently with the filing of the declaration provided for in KRS 304.27-060, the  
16 attorney of a domestic reciprocal insurer shall file with the commissioner~~executive~~  
17 ~~director~~ a bond in favor of this state for the benefit of all persons damaged as a  
18 result of breach by the attorney of the conditions of his or her bond as set forth in  
19 subsection (2) of this section. The bond shall be executed by the attorney and by an  
20 authorized corporate surety, and shall be subject to the commissioner's~~executive~~  
21 ~~director's~~ approval.

22 (2) The bond shall be in the penal sum of \$100,000, aggregate in form, conditioned that  
23 the attorney will faithfully account for all moneys and other property of the insurer  
24 coming into his or her hands, and that he or she will not withdraw or appropriate to  
25 his or her own use from the funds of the insurer, any moneys or property to which  
26 he or she is not entitled under the power of attorney.

27 (3) The bond shall provide that it is not subject to cancellation unless thirty (30) days'

advance notice in writing of cancellation is given both the attorney and the commissioner~~[executive director]~~.

➔Section 1378. KRS 304.27-110 is amended to read as follows:

In lieu of such bond, the attorney may maintain on deposit with the commissioner~~[executive director]~~ a like amount in cash or in value of securities qualified under this code as insurer's investments, and subject to the same conditions as the bond.

➔Section 1379. KRS 304.27-140 is amended to read as follows:

The attorney or other parties may advance to a domestic reciprocal insurer upon reasonable terms such funds as it may require from time to time in its operations. Sums so advanced shall not be treated as a liability of the insurer, and except upon liquidation of the insurer, shall not be withdrawn or repaid except out of the insurer's realized earned surplus in excess of its minimum required surplus. No such withdrawal or repayment shall be made without the advance approval of the commissioner~~[executive director]~~. This section does not apply to bank loans, or to other loans made upon security.

➔Section 1380. KRS 304.27-150 is amended to read as follows:

- (1) The annual statement of a reciprocal insurer shall be made and filed by its attorney.
- (2) The statement shall be supplemented by such information as may be required by the commissioner~~[executive director]~~ relative to the affairs and transactions of the attorney.

➔Section 1381. KRS 304.27-160 is amended to read as follows:

In determining the financial condition of a reciprocal insurer the commissioner~~[executive director]~~ shall apply the following rules:

- (1) The commissioner~~[He]~~ shall charge as liabilities the same reserves as are required of incorporated insurers issuing nonassessable policies on a reserve basis.
- (2) The surplus deposits of subscribers shall be allowed as assets, except that any premium deposit delinquent for ninety (90) days shall first be charged against such surplus deposit.

- 1 (3) The surplus deposits of subscribers shall not be charged as a liability.
- 2 (4) All premium deposits delinquent less than ninety (90) days shall be allowed as  
3 assets.
- 4 (5) An assessment levied upon subscribers, and not collected shall be allowed as assets.
- 5 (6) The contingent liability of subscribers shall not be allowed as an asset.
- 6 (7) The computation of reserves shall be based upon premium deposits other than  
7 membership fees and without any deduction for the compensation of the attorney.
- 8 ➔Section 1382. KRS 304.27-210 is amended to read as follows:

9 (1) Assessments may from time to time be levied upon subscribers of a domestic  
10 reciprocal insurer liable therefor under the terms of their policies by the attorney  
11 upon approval in advance by the subscribers' advisory committee and the  
12 commissioner~~[executive director]~~; or by the commissioner~~[executive director]~~ in  
13 liquidation of the insurer.

14 (2) Each subscriber's share of a deficiency for which an assessment is made, but not  
15 exceeding in any event his or her aggregate contingent liability as computed in  
16 accordance with KRS 304.27-230, shall be computed by applying to the premium  
17 earned on the subscriber's policy or policies during the period to be covered by the  
18 assessment, the ratio of the total deficiency to the total premiums earned during  
19 such period upon all policies subject to the assessment.

20 (3) In computing the earned premiums for the purposes of this section, the gross  
21 premium received by the insurer for the policy shall be used as a base, deducting  
22 therefrom solely charges not recurring upon the renewal or extension of the policy.

23 (4) No subscriber shall have an offset against any assessment for which he or she is  
24 liable, on account of any claim for unearned premium or losses payable.

25 ➔Section 1383. KRS 304.27-220 is amended to read as follows:

26 Every subscriber of a domestic reciprocal insurer having contingent liability shall be  
27 liable for, and shall pay his or her share of any assessment, as computed and limited in

1 accordance with this subtitle, if:

2 (1) While his or her policy is in force or within one (1) year after its termination, he or  
 3 she is notified by either the attorney or the commissioner~~[executive director]~~ of his  
 4 or her intention to levy such assessment, or

5 (2) If an order to show cause why a receiver, conservator, rehabilitator or liquidator of  
 6 the insurer should not be appointed is issued while his or her policy is in force or  
 7 within one (1) year after its termination.

8 ➔Section 1384. KRS 304.27-240 is amended to read as follows:

9 (1) If a reciprocal insurer has a surplus of assets over all liabilities at least equal to the  
 10 minimum capital stock and surplus required to be maintained by a domestic stock  
 11 insurer authorized to transact like kinds of insurance, upon application of the  
 12 attorney and as approved by the subscribers' advisory committee the  
 13 commissioner~~[executive director]~~ shall issue his or her certificate authorizing the  
 14 insurer to extinguish the contingent liability of subscribers under its policies then in  
 15 force in this state, and to omit provisions imposing contingent liability in all  
 16 policies delivered or issued for delivery in this state for so long as all such surplus  
 17 remains unimpaired.

18 (2) Upon impairment of such surplus, the commissioner~~[executive director]~~ shall  
 19 forthwith revoke the certificate. Such revocation shall not render subject to  
 20 contingent liability any policy then in force and for the remainder of the period for  
 21 which the premium has theretofore been paid; but after such revocation no policy  
 22 shall be issued or renewed without providing for contingent assessment liability of  
 23 the subscriber.

24 (3) The commissioner~~[executive director]~~ shall not authorize a domestic reciprocal  
 25 insurer so to extinguish the contingent liability of any of its subscribers or in any of  
 26 its policies to be issued, unless it qualifies to and does extinguish such liability of  
 27 all its subscribers and in all such policies for all kinds of insurance transacted by it.



1 Except, that if required by the laws of another state in which the insurer is  
 2 transacting insurance as an authorized insurer, the insurer may issue policies  
 3 providing for the contingent liability of such of its subscribers as may acquire such  
 4 policies in such state, and need not extinguish the contingent liability applicable to  
 5 policies theretofore in force in such state.

6 ➔Section 1385. KRS 304.27-260 is amended to read as follows:

7 Upon the liquidation of a domestic reciprocal insurer, its assets remaining after discharge  
 8 of its indebtedness and policy obligations, the return of any contributions of the attorney  
 9 or other persons to its surplus, and the return of any unused premium, savings, or credits  
 10 then standing on subscribers' accounts, shall be distributed to its subscribers who were  
 11 such within the twelve (12) months prior to the last termination of its certificate of  
 12 authority, according to such reasonable formula as the commissioner~~executive director~~  
 13 may approve.

14 ➔Section 1386. KRS 304.27-270 is amended to read as follows:

15 (1) A domestic reciprocal insurer upon affirmative vote of not less than two-thirds (2/3)  
 16 of its subscribers who vote on such merger pursuant to due notice and the approval  
 17 of the commissioner~~executive director~~ of the terms therefor, may merge with  
 18 another reciprocal insurer or be converted to a stock or mutual insurer.

19 (2) Such a stock or mutual insurer shall be subject to the same capital or surplus  
 20 requirements and shall have the same rights as a like domestic insurer transacting  
 21 like kinds of insurance.

22 (3) The commissioner~~executive director~~ shall not approve any plan for such merger  
 23 or conversion which is inequitable to subscribers, or which, if for conversion to a  
 24 stock insurer, does not give each subscriber preferential right to acquire stock of the  
 25 proposed insurer proportionate to his or her interest in the reciprocal insurer as  
 26 determined in accordance with KRS 304.27-260 and a reasonable length of time  
 27 within which to exercise such right.

➔Section 1387. KRS 304.27-280 is amended to read as follows:

- (1) If the assets of a domestic reciprocal insurer are at any time insufficient to discharge its liabilities, other than any liability on account of funds contributed by the attorney or others, and to maintain the required surplus, its attorney shall forthwith make up the deficiency or levy an assessment upon the subscribers for the amount needed to make up the deficiency; but subject to the limitation set forth in the power of attorney or policy.
- (2) If the attorney fails to make up such deficiency or to make the assessment within thirty (30) days after the commissioner~~executive director~~ orders him or her to do so, or if the deficiency is not fully made up within sixty (60) days after the date the assessment was made, the insurer shall be deemed insolvent and shall be proceeded against as authorized by this code.
- (3) If liquidation of such an insurer is ordered, an assessment shall be levied upon the subscribers for such an amount, subject to limits as provided by this subtitle, as the commissioner~~executive director~~ determines to be necessary to discharge all liabilities of the insurer, exclusive of any funds contributed by the attorney or other persons, but including the reasonable cost of the liquidation.

➔Section 1388. KRS 304.28-030 is amended to read as follows:

Underwriters shall file with the commissioner~~executive director~~ for an original certificate of authority, an application, signed and sworn to by their duly authorized attorney, setting forth in addition to matters required in KRS 304.3-150:

- (1) The name of the attorney and title under which the business is to be conducted, which title shall contain the name Lloyd's and shall not be so similar to any name or title in use in this state as to be likely to confuse or deceive.
- (2) The names and addresses of all the underwriters proposing to engage in the business.
- (3) The number of underwriters, which shall not be less than twenty-five (25), and that

1 each underwriter is worth in his or her own right not less than \$20,000 over and  
 2 above all his or her liabilities.

3 (4) A copy of each form of policy or contract by which such insurance is to be effected.

4 (5) A copy of the form of power of attorney by virtue of which the attorney is to act for  
 5 and bind the several underwriters and a copy of the articles of agreement entered  
 6 into between the underwriters themselves and the attorney.

7 (6) A financial statement showing in detail the assets contributed or accumulated in the  
 8 hands of the attorney, committee of underwriters, trustees and/or other officers of  
 9 such underwriters at Lloyd's, together with the liabilities incurred and outstanding  
 10 and the income received and disbursements made by the attorney for the  
 11 underwriters.

12 (7) An instrument executed by each and all of the underwriters specially empowering  
 13 the attorney to accept services of process for each underwriter in any action on any  
 14 policy or contract of insurance and an instrument from the attorney to the  
 15 commissioner~~executive director~~, delegating the attorney's powers in this respect  
 16 to the commissioner~~executive director~~.

17 ➔Section 1389. KRS 304.28-040 is amended to read as follows:

18 (1) Upon the filing of the documents required, the commissioner~~executive director~~  
 19 shall examine them. If it appears that all the statements made are true and that the  
 20 rights of the policyholders will be protected thereunder, and that the insurer is  
 21 otherwise qualified therefor, the commissioner~~he~~ shall issue a certificate of  
 22 authority to the underwriters under the name chosen and approved, authorizing  
 23 them to transact the business of insurance as specified in the application.

24 (2) Prior to the issuance of an original certificate of authority, a Lloyd's organization  
 25 shall submit to examination of its affairs, by the commissioner~~executive director~~,  
 26 or, if acceptable to the commissioner~~executive director~~, shall file with the  
 27 commissioner~~him~~ a certified copy of an examination of its affairs made within

1 two (2) years by the proper supervising official of some other state.

2 ➔Section 1390. KRS 304.28-050 is amended to read as follows:

3 Additional or substituted underwriters shall be bound in the same manner and to the same  
4 extent as original subscribers to the articles of agreement and power of attorney on file  
5 with the commissioner~~[executive director]~~, and the acts of the duly appointed deputy or  
6 substitute attorney of any attorney licensed under this subtitle in accepting powers of  
7 attorney from underwriters and in making and issuing policies and contracts of insurance  
8 and in doing any additional acts incident thereto shall be deemed authorized by the  
9 license issued to the original attorney.

10 ➔Section 1391. KRS 304.29-101 is amended to read as follows:

11 A domestic society organized on or after January 1, 1989, shall be formed as follows:

12 (1) Seven (7) or more citizens of the United States, a majority of whom are citizens of  
13 this state, who desire to form a fraternal benefit society, may make, sign and  
14 acknowledge before some officer competent to take acknowledgment of deeds,  
15 articles of incorporation, in which shall be stated:

16 (a) The proposed corporate name of the society, which shall not so closely  
17 resemble the name of any society or insurance company as to be misleading or  
18 confusing;

19 (b) The purposes for which it is being formed and the mode in which its corporate  
20 powers are to be exercised. The purposes shall not include more liberal  
21 powers than are granted by this subtitle; and

22 (c) The names and residences of the incorporators and the names, residences and  
23 official titles of all the officers, trustees, directors, or other persons who are to  
24 have and exercise the general control of the management of the affairs and  
25 funds of the society for the first year or until the ensuing election at which all  
26 such officers shall be elected by the supreme governing body, which election  
27 shall be held not later than one (1) year from the date of issuance of the

1 permanent certificate of authority.

- 2 (2) The articles of incorporation, duly certified copies of the society's bylaws and rules,  
3 copies of all proposed forms of certificates, applications therefor, and circulars to be  
4 issued by the society and a bond conditioned upon the return to applicants of the  
5 advanced payments if the organization is not completed within one (1) year shall be  
6 filed with the commissioner~~[executive director]~~, who may require further  
7 information. The bond with sureties approved by the commissioner~~[executive~~  
8 ~~director]~~ shall be in an amount, not less than three hundred thousand dollars  
9 (\$300,000) nor more than one million five hundred thousand dollars (\$1,500,000),  
10 as required by the commissioner~~[executive director]~~. All documents filed shall be  
11 in the English language. If the purposes of the society conform to the requirements  
12 of this subtitle and all provisions of the law have been complied with, the  
13 commissioner~~[executive director]~~ shall so certify, retain and file the articles of  
14 incorporation and furnish the incorporators a preliminary certificate of authority  
15 authorizing the society to solicit members.
- 16 (3) No preliminary certificate of authority granted under the provisions of this section  
17 shall be valid after one (1) year from its date or after such further period, not  
18 exceeding one (1) year, as may be authorized by the commissioner~~[executive~~  
19 ~~director]~~ upon cause shown, unless the five hundred (500) applicants hereinafter  
20 required have been secured and the organization has been completed as herein  
21 provided. The articles of incorporation and all other proceedings thereunder shall  
22 become null and void in one (1) year from the date of the preliminary certificate of  
23 authority, or at the expiration of the extended period, unless the society shall have  
24 completed its organization and received a certificate of authority to do business.
- 25 (4) Upon receipt of a preliminary certificate of authority from the  
26 commissioner~~[executive director]~~, the society may solicit members for the purpose  
27 of completing its organization, shall collect from each applicant the amount of not

1 less than one (1) regular monthly premium in accordance with its table of rates, and  
 2 shall issue to each applicant a receipt for the amount so collected. No society shall  
 3 incur any liability other than for the return of advance premium, nor issue any  
 4 certificate, nor pay, allow, or offer or promise to pay or allow, any benefit to any  
 5 person until:

6 (a) Actual bona fide applications for benefits have been secured on not less than  
 7 five hundred (500) applicants, and any necessary evidence of insurability has  
 8 been furnished to and approved by the society;

9 (b) At least ten (10) subordinate lodges have been established into which the five  
 10 hundred (500) applicants have been admitted;

11 (c) There has been submitted to the commissioner~~[executive director]~~, under oath  
 12 of the president or secretary, or corresponding officer of the society, a list of  
 13 the applicants, giving their names, addresses, date each was admitted, name  
 14 and number of the subordinate lodge of which each applicant is a member,  
 15 amount of benefits to be granted and premiums therefor; and

16 (d) It shall have been shown to the commissioner~~[executive director]~~, by sworn  
 17 statement of the treasurer, or corresponding officer of the society, that at least  
 18 five hundred (500) applicants have each paid in cash at least one (1) regular  
 19 monthly premium, which premiums in the aggregate shall amount to at least  
 20 one hundred fifty thousand dollars (\$150,000). The advance premiums shall  
 21 be held in trust during the period of organization; and if the society has not  
 22 qualified for a certificate of authority within one (1) year, the premiums shall  
 23 be returned to the applicants.

24 (5) The commissioner~~[executive director]~~ may make examination and require further  
 25 information as he or she deems advisable. Upon presentation of satisfactory  
 26 evidence that the society has complied with all the provisions of law, the  
 27 commissioner~~[executive director]~~ shall issue to the society a certificate of authority

1 to that effect and that the society is authorized to transact business pursuant to the  
 2 provisions of KRS Chapter 304. The certificate of authority shall be prima facie  
 3 evidence of the existence of the society at the date of the certificate. The  
 4 commissioner~~executive director~~ shall cause a record of the certificate of authority  
 5 to be made. A certified copy of the record may be given in evidence with like effect  
 6 as the original certificate of authority.

7 (6) Any incorporated society authorized to transact business in this state at the time this  
 8 subtitle becomes effective shall not be required to reincorporate.

9 (7) No unincorporated or voluntary association shall be permitted to transact business  
 10 in this state as a fraternal benefit society.

11 ➔Section 1392. KRS 304.29-111 is amended to read as follows:

12 (1) A domestic society may amend its laws in accordance with the provisions thereof by  
 13 action of its supreme governing body at any regular or special meeting or, if its laws  
 14 so provide, by referendum. The referendum may be held in accordance with the  
 15 provisions of its laws by the vote of the voting members of the society, by the vote  
 16 of delegates or representatives of voting members, or by the vote of local lodges. A  
 17 society may provide for voting by mail. No amendment submitted for adoption by  
 18 referendum shall be adopted unless, within six (6) months from the date of  
 19 submission, a majority of the members voting shall have signified their consent to  
 20 the amendment by one (1) of the methods herein specified.

21 (2) No amendment to the laws of any domestic society shall take effect unless approved  
 22 by the commissioner~~executive director~~, who shall approve the amendment if he or  
 23 she finds that it has been duly adopted and is not inconsistent with any requirement  
 24 of the laws of this state or with the character, objects and purposes of the society.  
 25 Unless the commissioner~~executive director~~ shall disapprove any amendment  
 26 within sixty (60) days after the filing, the amendment shall be considered approved.

27 The approval or disapproval of the commissioner~~executive director~~ shall be in

1 writing and mailed to the secretary or corresponding officer of the society at its  
 2 principal office. In case the commissioner~~[executive-director]~~ disapproves the  
 3 amendment, the reasons therefor shall be stated in the written notice.

4 (3) Within ninety (90) days from the approval by the commissioner~~[executive-director]~~,  
 5 all amendments, or a synopsis, shall be furnished to all members of the society,  
 6 either by mail or by publication in full in the official publication of the society. The  
 7 affidavit of any officer of the society or of anyone authorized by it to mail any  
 8 amendments or synopsis, stating facts which show that same have been duly  
 9 addressed and mailed, shall be prima facie evidence that the amendments or  
 10 synopsis, have been furnished the addressee.

11 (4) Every foreign or alien society authorized to do business in this state shall file with  
 12 the commissioner~~[executive-director]~~ a duly certified copy of all amendments of, or  
 13 additions to, its laws within ninety (90) days after the enactment of same.

14 (5) Printed copies of the laws as amended, certified by the secretary or corresponding  
 15 officer of the society, shall be prima facie evidence of the legal adoption thereof.

16 ➔Section 1393. KRS 304.29-131 is amended to read as follows:

17 (1) A domestic society may, by a reinsurance agreement, cede any individual risk or  
 18 risks in whole or in part to an insurer, other than another fraternal benefit society,  
 19 having the power to make reinsurance and authorized to do business in this state, or  
 20 if not so authorized, one (1) which is approved by the commissioner~~[executive~~  
 21 ~~director]~~; but no society may reinsure substantially all of its insurance in force  
 22 without the written permission of the commissioner~~[executive-director]~~. It may take  
 23 credit for the reserves on the ceded risks to the extent reinsured; but no credit shall  
 24 be allowed as an admitted asset or as a deduction from liability, to a ceding society  
 25 for reinsurance made, ceded, renewed, or otherwise becoming effective after  
 26 January 1, 1989, unless the reinsurance is payable by the assuming insurer on the  
 27 basis of the liability of the ceding society under the contract or contracts reinsured



1 without diminution because of the insolvency of the ceding society.

- 2 (2) Notwithstanding the limitation in subsection (1) of this section, a society may  
3 reinsure the risks of another society in a consolidation or merger approved by the  
4 commissioner~~executive director~~ under KRS 304.29-141.

5 ➔Section 1394. KRS 304.29-141 is amended to read as follows:

- 6 (1) A domestic society may consolidate or merge with any other society by complying  
7 with the provisions of this section. It shall file with the commissioner~~executive~~  
8 ~~director~~:

9 (a) A certified copy of the written contract containing in full the terms and  
10 conditions of the consolidation or merger;

11 (b) A sworn statement by the president and secretary or corresponding officers of  
12 each society showing the financial condition thereof on a date fixed by the  
13 commissioner~~executive director~~ but not earlier than December 31, next  
14 preceding the date of the contract;

15 (c) A certificate of the officers, duly verified by their respective oaths, that the  
16 consolidation or merger has been approved by a two-thirds (2/3) vote of the  
17 supreme governing body of each society, the vote being conducted at a regular  
18 or special meeting of each body, or, if the society's laws so permit, by mail;  
19 and

20 (d) Evidence that at least sixty (60) days prior to the action of the supreme  
21 governing body of each society, the text of the contract has been furnished to  
22 all members of each society either by mail or by publication in full in the  
23 official publication of each society.

- 24 (2) If the commissioner~~executive director~~ finds that the contract is in conformity with  
25 the provisions of this section, that the financial statements are correct and that the  
26 consolidation or merger is just and equitable to the members of each society, the  
27 commissioner~~executive director~~ shall approve the contract and issue a certificate

1 to that effect. Upon approval, the contract shall be in full force and effect unless any  
 2 society which is a party to the contract is incorporated under the laws of any other  
 3 state or territory. If the consolidation or merger shall not become effective unless  
 4 and until it has been approved as provided by the laws of the state or territory and a  
 5 certificate of approval filed with the commissioner~~{executive director}~~ of this state  
 6 or, if the laws of the state or territory contain no such provision, the consolidation or  
 7 merger shall not become effective unless and until it has been approved by the  
 8 commissioner of insurance of the state or territory and a certificate of the approval  
 9 filed with the commissioner~~{executive director}~~ of this state.

10 (3) Upon the consolidation or merger becoming effective, all the rights, franchises and  
 11 interests of the consolidated or merged societies in and to every species of property,  
 12 real, personal or mixed, and things in action thereunto belonging shall be vested in  
 13 the society resulting from or remaining after the consolidation or merger without  
 14 any other instrument, except that conveyances of real property may be evidenced by  
 15 proper deeds; and the title to any real estate or interest therein, vested under the  
 16 laws of this state in any of the societies consolidated or merged, shall not revert or  
 17 be in any way impaired by reason of the consolidation or merger, but shall vest  
 18 absolutely in the society resulting from or remaining after the consolidation or  
 19 merger.

20 (4) The affidavit of any officer of the society or of anyone authorized by it to mail any  
 21 notice or document, stating that the notice or document has been duly addressed and  
 22 mailed, shall be prima facie evidence that the notice or document has been  
 23 furnished the addressees.

24 ➔Section 1395. KRS 304.29-151 is amended to read as follows:

25 Any domestic fraternal benefit society may be converted and licensed as a mutual life  
 26 insurance company by compliance with all the requirements of the insurance laws of this  
 27 state for mutual life insurance companies. A plan of conversion shall be prepared in

1 writing by the board of directors setting forth in full the terms and conditions of  
2 conversion. The affirmative vote of two-thirds (2/3) of all members of the supreme  
3 governing body at a regular or special meeting shall be necessary for the approval of the  
4 plan. No conversion shall take effect unless and until approved by the  
5 commissioner~~executive director~~ who may give approval if he or she finds that that  
6 proposed change is in conformity with the requirements of law and not prejudicial to the  
7 certificate holders of the society.

8 ➔Section 1396. KRS 304.29-191 is amended to read as follows:

9 (1) Every society authorized to do business in this state shall issue to each owner of a  
10 benefit contract a certificate specifying the amount of benefits provided. The  
11 certificate, together with any riders or endorsements attached thereto, the laws of the  
12 society, the application for membership, the application for insurance and  
13 declaration of insurability, if any, signed by the applicant, and all amendments to  
14 each, shall constitute the benefit contract, as of the date of issuance, between the  
15 society and the owner, and the certificate shall so state. A copy of the application  
16 for insurance and declaration of insurability, if any, shall be endorsed upon or  
17 attached to the certificate. All statements on the application shall be representations  
18 and not warranties. Any waiver of this provision shall be void.

19 (2) Any changes, additions or amendments to the laws of the society duly made or  
20 enacted subsequent to the issuance of the certificate, shall bind the owner and the  
21 beneficiaries, and shall govern and control the benefit contract in all respects the  
22 same as though the changes, additions or amendments had been made prior to and  
23 were in force at the time of the application for insurance, except that no change,  
24 addition or amendment shall destroy or diminish benefits which the society  
25 contracted to give the owner as of the date of issuance.

26 (3) Any person upon whose life a benefit contract is issued prior to attaining the age of  
27 majority shall be bound by the terms of the application and certificate and by all the

1 laws and rules of the society to the same extent as though the age of majority had  
2 been attained at the time of application.

3 (4) A society shall provide in its laws that, if its reserves as to all or any class of  
4 certificates become impaired, its board of directors or corresponding body may  
5 require that there shall be paid by the owner to the society the amount of the owner's  
6 equitable proportion of the deficiency as ascertained by its board, and that if the  
7 payment is not made either:

8 (a) It shall stand as an indebtedness against the certificate and draw interest not to  
9 exceed the rate specified for certificate loans under the certificates; or

10 (b) In lieu of or in combination with paragraph (a), the owner may accept a  
11 proportionate reduction in benefits under the certificate.

12 The society may specify the manner of the election and which alternative is to be  
13 presumed if no election is made.

14 (5) Copies of any of the documents mentioned in this section, certified by the secretary  
15 or corresponding officer of the society, shall be received as evidence of the terms  
16 and conditions thereof.

17 (6) No certificate shall be delivered or issued for delivery in this state unless a copy of  
18 the form has been filed with and approved by the commissioner~~executive director~~  
19 in the manner provided for like policies issued by life insurers in this state. Every  
20 life, accident, health, or disability insurance certificate and every annuity certificate  
21 issued on or after one (1) year from January 1, 1989 shall meet the standard contract  
22 provision requirements not inconsistent with this subtitle for like policies issued by  
23 life insurers in this state, except that a society may provide for a grace period for  
24 payment of premiums of one (1) full month in its certificates. The certificates shall  
25 also contain a provision stating the amount of premiums which are payable under  
26 the certificate and a provision reciting or setting forth the substance of any sections  
27 of the society's laws or rules in force at the time of issuance of the certificate which,

1 if violated, will result in the termination or reduction of benefits payable under the  
 2 certificate. If the laws of the society provide for expulsion or suspension of a  
 3 member, the certificate shall also contain a provision that any member so expelled  
 4 or suspended, except for nonpayment of a premium or within the contestable period  
 5 for material misrepresentation in the application for membership or insurance, shall  
 6 have the privilege of maintaining the certificate in force by continuing payment of  
 7 the required premium.

8 (7) Benefit contracts issued on the lives of persons below the society's minimum age for  
 9 adult membership may provide for transfer of control or ownership to the insured at  
 10 an age specified in the certificate. A society may require approval of an application  
 11 for membership in order to effect this transfer, and may provide in all other respects  
 12 for the regulation, government and control of certificates and all rights, obligations  
 13 and liabilities incident thereto and connected therewith. Ownership rights prior to  
 14 transfer shall be specified in the certificate.

15 (8) A society may specify the terms and conditions on which benefit contracts may be  
 16 assigned.

17 ➔Section 1397. KRS 304.29-251 is amended to read as follows:

18 (1) Standards of valuation for certificates issued prior to one (1) year after January 1,  
 19 1989, shall be those provided by the laws applicable immediately prior to January 1,  
 20 1989.

21 (2) The minimum standards of valuation for certificates issued on or after one (1) year  
 22 from January 1, 1989, shall be based on the following tables:

23 (a) For certificates of life insurance -- the commissioner's 1941 standard ordinary  
 24 mortality table, the commissioner's 1941 standard industrial mortality table,  
 25 the commissioner's 1958 standard ordinary mortality table, the commissioner's  
 26 1980 standard ordinary mortality table, or any more recent table made  
 27 applicable to life insurers;

(b) For annuity and pure endowment certificates, for total and permanent disability benefits, for accidental death benefits and for noncancellable accident and health benefits -- such tables as are authorized for use by life insurers in this state.

All of the above shall be under valuation methods and standards, including interest assumptions, in accordance with the laws of this state applicable to life insurers issuing policies containing like benefits.

(3) The commissioner~~[executive director]~~ may, in his or her discretion, accept other standards for valuation if he or she finds that the reserves produced thereby will not be less in the aggregate than reserves computed in accordance with the minimum valuation standard herein prescribed. The commissioner~~[executive director]~~ may, in his or her discretion, vary the standards of mortality applicable to all benefit contracts on substandard lives or other extra hazardous lives by any society authorized to do business in this state.

(4) Any society, with the consent of the commissioner of insurance of the state of domicile of the society and under the conditions, if any, which the commissioner~~[executive director]~~ may impose, may establish and maintain reserves on its certificates in excess of the reserves required thereunder, but the contractual rights of any benefit member shall not be affected thereby.

➔Section 1398. KRS 304.29-261 is amended to read as follows:

(1) Every society transacting business in this state shall annually, on or before the first day of March, file with the commissioner~~[executive director]~~ a true statement of its financial condition, transactions and affairs for the preceding calendar year and pay the fee required under KRS 304.4-010 for filing it. The statement shall be in general form and context as approved by the National Association of Insurance Commissioners for fraternal benefit societies and as supplemented by additional information required by the commissioner~~[executive director]~~.

1 (2) As part of the annual statement, each society shall, on or before the first day of  
 2 March, file with the commissioner~~executive director~~ a valuation of its certificates  
 3 in force on December 31 last preceding. The commissioner~~executive director~~  
 4 may, in his or her discretion for cause shown, extend the time for filing the  
 5 valuation for not more than two (2) calendar months. The valuation shall be done in  
 6 accordance with the standards specified in KRS 304.29-251. The valuation and  
 7 underlying data shall be certified by a qualified actuary or, at the expense of the  
 8 society, verified by the actuary of the department of insurance of the state of  
 9 domicile of the society.

10 (3) A society failing to file the annual statement in the form and within the time  
 11 provided by this section shall forfeit one hundred dollars (\$100) for each day during  
 12 which the default continues; and, upon notice by the commissioner~~executive~~  
 13 ~~director~~, its authority to do business in this state shall cease while the default  
 14 continues.

15 (4) Each society authorized to transact business in this state pursuant to this subtitle  
 16 shall comply with KRS 304.2-205.

17 ➔Section 1399. KRS 304.29-271 is amended to read as follows:

18 Societies which are now authorized to transact business in this state may continue to do  
 19 business until May 1 next succeeding January 1, 1989. The authority of the societies, and  
 20 all societies hereafter licensed, may be renewed annually, but in all cases shall terminate  
 21 on the succeeding April 30. However, a license so issued shall continue in full force and  
 22 effect until the new license be issued or specifically refused. For each license or renewal,  
 23 the society shall, prior to May 1, pay to the commissioner~~executive director~~ a fee as  
 24 specified in Subtitle 4 of this chapter. A duly certified copy or duplicate of the license  
 25 shall be prima facie evidence that the licensee is a fraternal benefit society within the  
 26 meaning of this subtitle.

27 ➔Section 1400. KRS 304.29-291 is amended to read as follows:

1 No foreign or alien society shall transact business in this state without a license issued by  
 2 the commissioner~~[executive director]~~. Any society desiring admission to this state shall  
 3 comply substantially with the requirements and limitations of this subtitle applicable to  
 4 domestic societies. Any society may be licensed to transact business in this state upon  
 5 filing with the commissioner~~[executive director]~~:

- 6 (1) A duly certified copy of its articles of incorporation;
- 7 (2) A copy of its bylaws, certified by its secretary or corresponding officer;
- 8 (3) A power of attorney to the commissioner~~[executive director]~~ as prescribed in KRS  
 9 304.29-351;
- 10 (4) A statement of its business under oath of its president and secretary or  
 11 corresponding officers in a form prescribed by the commissioner~~[executive~~  
 12 ~~director]~~, duly verified by an examination made by the supervising insurance  
 13 official of its home state or other state, territory, province or country, satisfactory to  
 14 the commissioner~~[executive director]~~;
- 15 (5) Certification from the proper official of its home state, territory, province or country  
 16 that the society is legally incorporated and licensed to transact business therein;
- 17 (6) Copies of its certificate forms; and
- 18 (7) Such other information as the commissioner~~[executive director]~~ may deem  
 19 necessary; and upon a showing that its assets are invested in accordance with the  
 20 provisions of this subtitle.

21 ➔Section 1401. KRS 304.29-301 is amended to read as follows:

- 22 (1) If the commissioner~~[executive director]~~, upon investigation, finds that a domestic  
 23 society:
  - 24 (a) Has exceeded its powers;
  - 25 (b) Has failed to comply with any provision of this subtitle;
  - 26 (c) Is not fulfilling its contracts in good faith;
  - 27 (d) Has a membership of less than four hundred (400) after an existence of one



1 (1) year or more; or

2 (e) Is conducting business fraudulently or in a manner hazardous to its members,  
3 creditors, the public or the business,

4 the commissioner~~[executive-director]~~ shall notify the society of the deficiency or  
5 deficiencies and state in writing the reasons for his or her dissatisfaction. The  
6 commissioner~~[executive-director]~~ shall issue a written notice to the society  
7 requiring that the deficiency or deficiencies which exist be corrected. After the  
8 notice, the society shall have a thirty (30) day period in which to comply with the  
9 commissioner's~~[executive-director's]~~ request for correction; and if the society fails  
10 to comply, the commissioner~~[executive-director]~~ shall notify the society of the  
11 findings of noncompliance and require the society to show cause on a date named  
12 why it should not be enjoined from carrying on any business until the violation  
13 complained of shall have been corrected, or why an action in Franklin Circuit Court  
14 should not be commenced against the society.

15 (2) If on that date the society does not present good and sufficient reasons why it should  
16 not be so enjoined or why such action should not be commenced, the  
17 commissioner~~[executive-director]~~ may present the facts to the Attorney General  
18 who shall, if he or she deems the circumstances warrant, commence an action to  
19 enjoin the society from transacting business.

20 (3) The court shall notify the officers of the society of a hearing. If after a full hearing it  
21 appears that the society should be so enjoined or liquidated or a receiver appointed,  
22 the court shall enter the necessary order. No society so enjoined shall have the  
23 authority to do business until:

24 (a) The commissioner~~[executive-director]~~ finds that the violation complained of  
25 has been corrected;

26 (b) The costs of the action shall have been paid by the society, if the court finds  
27 that the society was in default as charged;

1 (c) The court has dissolved its injunction; and

2 (d) The commissioner~~[executive director]~~ has reinstated the certificate of  
3 authority.

4 (4) If the court orders the society liquidated, it shall be enjoined from carrying on any  
5 further business. The receiver of the society shall take possession of the books,  
6 papers, money and other assets of the society, and, under the direction of the court,  
7 close the affairs of the society and distribute its funds to those entitled to them.

8 (5) No action under this section shall be recognized in any court of this state unless  
9 brought by the Attorney General upon request of the commissioner~~[executive~~  
10 ~~director]~~. If a receiver is to be appointed for a domestic society, the court shall  
11 appoint the commissioner~~[executive director]~~ as receiver.

12 (6) The provisions of this section relating to hearing by the commissioner~~[executive~~  
13 ~~director]~~, action by the Attorney General at the request of the  
14 commissioner~~[executive director]~~ of insurance, hearing by the court, injunction and  
15 receivership shall be applicable to a society which shall voluntarily determine to  
16 discontinue business.

17 ➔Section 1402. KRS 304.29-311 is amended to read as follows:

18 (1) If the commissioner~~[executive director]~~ upon investigation finds that a foreign or  
19 alien society transacting or applying to transact business in this state:

20 (a) Has exceeded its powers;

21 (b) Has failed to comply with any of the provisions of this subtitle;

22 (c) Is not fulfilling its contracts in good faith; or

23 (d) Is conducting its business fraudulently or in a manner hazardous to its  
24 members or creditors or the public,

25 the commissioner~~[executive director]~~ shall notify the society of the deficiency or  
26 deficiencies and state in writing the reasons for his or her dissatisfaction. The  
27 commissioner~~[executive director]~~ shall issue a written notice to the society

1 requiring that the deficiency or deficiencies which exist are corrected. After the  
 2 notice, the society shall have a thirty (30) day period in which to comply with the  
 3 commissioner's~~executive director's~~ request for correction; and if the society fails  
 4 to comply, the commissioner~~executive director~~ shall notify the society of the  
 5 findings of noncompliance and require the society to show cause on a date named  
 6 why its license should not be suspended, revoked or refused. If on that date the  
 7 society does not present good and sufficient reason why its authority to do business  
 8 in this state should not be suspended, revoked or refused, the  
 9 commissioner~~executive director~~ may suspend or refuse the license of the society  
 10 to do business in this state until satisfactory evidence is furnished to the  
 11 commissioner~~executive director~~ that suspension or refusal should be withdrawn  
 12 or the commissioner~~executive director~~ may revoke the authority of the society to  
 13 do business in this state.

- 14 (2) Nothing contained in this section shall be taken or construed as preventing any  
 15 society from continuing in good faith all contracts made in this state during the time  
 16 the society was legally authorized to transact business herein.

17 ➔ Section 1403. KRS 304.29-321 is amended to read as follows:

18 No application or petition for injunction against any domestic, foreign or alien society, or  
 19 lodge thereof, shall be recognized in any court of this state unless made by the Attorney  
 20 General upon request of the commissioner~~executive director~~.

21 ➔ Section 1404. KRS 304.29-351 is amended to read as follows:

- 22 (1) Every society authorized to do business in this state shall appoint in writing the  
 23 Secretary of State and each successor in office to be its true and lawful attorney  
 24 upon whom all lawful process in any action or proceeding against it shall be served,  
 25 and shall agree that any lawful process against it which is served on the attorney  
 26 shall be of the same legal force and validity as if served upon the society, and that  
 27 the authority shall continue in force so long as any liability remains outstanding in

1 this state. Copies of the appointment, certified by the commissioner~~[executive~~  
 2 ~~director]~~, shall be deemed sufficient evidence thereof and shall be admitted in  
 3 evidence with the same force and effect as the original might be admitted.

4 (2) Service of process in any action may be made by service upon the Secretary of State  
 5 as provided in KRS 304.3-230.

6 ➔Section 1405. KRS 304.29-361 is amended to read as follows:

7 All decisions and findings of the commissioner~~[executive director]~~ made under the  
 8 provisions of this subtitle shall be subject to review by proper proceedings in any court of  
 9 competent jurisdiction in this state.

10 ➔Section 1406. KRS 304.29-371 is amended to read as follows:

11 (1) Nothing contained in this chapter shall be so construed as to affect or apply to:

12 (a) Grand or subordinate lodges of societies, orders or associations now doing  
 13 business in this state which provide benefits exclusively through local or  
 14 subordinate lodges;

15 (b) Orders, societies or associations which admit to membership only persons  
 16 engaged in one (1) or more crafts or hazardous occupations, in the same or  
 17 similar lines of business, insuring only their own members and their families,  
 18 and the ladies societies or ladies' auxiliaries to such orders, societies or  
 19 associations;

20 (c) Domestic societies which limit their membership to employees of a particular  
 21 city or town, designated firm, business house or corporation which provide for  
 22 a death benefit of not more than four hundred dollars (\$400) or disability  
 23 benefits of not more than three hundred fifty dollars (\$350) to any person in  
 24 any one (1) year, or both; or

25 (d) Domestic societies or associations of a purely religious, charitable or  
 26 benevolent description, which provide for a death benefit of not more than  
 27 four hundred dollars (\$400) or for disability benefits of not more than three

1           hundred fifty dollars (\$350) to any one (1) person in any one (1) year, or both.

2   (2) Any society or association described in paragraphs (c) or (d) of subsection (1) of  
3   this section which provides for death or disability benefits for which benefit  
4   certificates are issued, and any society or association included in paragraph (d) of  
5   subsection (1) of this section which has more than one thousand (1000) members,  
6   shall not be exempted from the provisions of this subtitle but shall comply with all  
7   requirements therein.

8   (3) No society which, by the provisions of this section, is exempt from the requirements  
9   of this subtitle, except any society described in paragraph (b) of subsection (1) of  
10   this section, shall give or allow, or promise to give or allow to any person any  
11   compensation for procuring new members.

12   (4) Every society which provides for benefits in case of death or disability resulting  
13   solely from accident, and which does not obligate itself to pay natural death or sick  
14   benefits, shall have all of the privileges and be subject to all the applicable  
15   provisions and regulations of this subtitle except that the provisions thereof relating  
16   to medical examination, valuations of benefit certificates, and incontestability, shall  
17   not apply to the society.

18   (5) The commissioner~~[executive director]~~ may require from any society or association,  
19   by examination or otherwise, such information as will enable the  
20   commissioner~~[executive director]~~ to determine whether the society or association is  
21   exempt from the provisions of this subtitle.

22   (6) Societies, exempted under the provisions of this section, shall also be exempt from  
23   all other provisions of the insurance laws of this state.

24       ➔Section 1407. KRS 304.30-020 is amended to read as follows:

25   For the purpose of this subtitle:

26   (1) The term "insurance premium finance company" or "premium finance company"  
27   means a person engaged in the business of entering into insurance premium finance

1 agreements.

2 (2) The term "premium finance agreement" means an agreement by which an insured or  
3 prospective insured promises to pay to a premium finance company the amount  
4 advanced or to be advanced under the agreement to an insurer or to an insurance  
5 agent in payment of premiums on an insurance contract together with a service  
6 charge as authorized and limited by this subtitle.

7 (3) The term "licensee" means a premium finance company, holding a license issued by  
8 the commissioner~~{executive director}~~ under this subtitle.

9 ➔Section 1408. KRS 304.30-030 is amended to read as follows:

10 (1) No person shall engage in the business of financing insurance premiums in this state  
11 without first having obtained a license as a premium finance company from the  
12 commissioner~~{executive director}~~.

13 (2) The annual license fee shall be as specified in Subtitle 4 of this chapter. Licenses  
14 may be renewed from year to year as of the first day of May of each year upon  
15 payment of the fee.

16 (3) The person to whom the license or the renewal thereof may be issued shall file  
17 sworn answers, subject to the penalties of perjury, to such interrogatories as the  
18 commissioner~~{executive director}~~ may require. The commissioner~~{executive~~  
19 ~~director}~~ shall have authority, at any time, to require the applicant fully to disclose  
20 the identity of all stockholders, partners, officers, and employees and he or she may,  
21 in his or her discretion, refuse to issue or renew a license in the name of any firm,  
22 partnership, or corporation if the commissioner~~{he}~~ is not satisfied that any officer,  
23 employee, stockholder, or partner thereof who may materially influence the  
24 applicant's conduct meets the standards of this subtitle.

25 ➔Section 1409. KRS 304.30-040 is amended to read as follows:

26 (1) Upon the filing of an application and the payment of the license fee, the  
27 commissioner~~{executive director}~~ shall make an investigation of each applicant and

1 shall issue a license if the applicant is qualified in accordance with this subtitle. If  
 2 the commissioner~~[executive director]~~ does not so find, he or she shall, within sixty  
 3 (60) days after he or she has received the application, at the request of the applicant,  
 4 give the applicant an administrative hearing. Hearings under this subtitle shall be  
 5 conducted in accordance with KRS Chapter 13B.

6 (2) The commissioner~~[executive director]~~ shall issue or renew a license as may be  
 7 applied for when he or she is satisfied that the person to be licensed:

- 8 (a) Is competent and trustworthy and intends to act in good faith in the capacity  
 9 involved by the license applied for;
- 10 (b) Has a good business reputation and has had experience, training, or education  
 11 so as to be qualified in the business for which the license is applied for; and
- 12 (c) If a corporation, is a corporation incorporated under the laws of this state or a  
 13 foreign corporation authorized to transact business in this state.

14 ➔Section 1410. KRS 304.30-050 is amended to read as follows:

15 (1) The commissioner~~[executive director]~~ may revoke or suspend the license of any  
 16 premium finance company when and if, after investigation, it appears to the  
 17 commissioner~~[executive director]~~ that:

- 18 (a) Any license issued to the company was obtained by fraud,
- 19 (b) There was any misrepresentation in the application for the license,
- 20 (c) The holder of the license has otherwise shown himself or herself  
 21 untrustworthy or incompetent to act as a premium finance company,
- 22 (d) The company has violated any of the provisions of this chapter, or
- 23 (e) The company has been rebating part of the service charge as allowed and  
 24 permitted by KRS 304.30-090 to any insurance agent or any employee of an  
 25 insurance agent or to any other person as an inducement to the financing of  
 26 any insurance policy with the premium finance company.

27 (2) Before the commissioner~~[executive director]~~ shall revoke, suspend, or refuse to

1 renew the license of any premium finance company, he or she shall give to the  
 2 person an opportunity for a hearing to be conducted in accordance with KRS  
 3 Chapter 13B. In lieu of or in addition to revoking or suspending the license for any  
 4 of the causes enumerated in the section, after hearing as provided in this subsection,  
 5 the commissioner~~[executive director]~~ may subject the company to a penalty  
 6 specified in Subtitle 99 of this chapter when the commissioner determines~~[in his~~  
 7 ~~judgment he finds]~~ that the public interest would not be harmed by the continued  
 8 operation of the company. The amount of any penalty shall be paid by the company  
 9 through the department~~[office]~~ of the commissioner~~[executive director]~~ to the State  
 10 Treasurer.

- 11 (3) If any applicant or licensee is aggrieved by any final order of the  
 12 commissioner~~[executive director]~~, the applicant or licensee shall have the right to  
 13 appeal to the Franklin Circuit Court in accordance with KRS Chapter 13B.

14 ➔Section 1411. KRS 304.30-060 is amended to read as follows:

- 15 (1) Every licensee shall maintain records of its premium finance transactions and the  
 16 records shall be open to examination and investigation by the  
 17 commissioner~~[executive director]~~.
- 18 (2) Every licensee shall preserve its records of premium finance transactions, including  
 19 cards used in a card system, for at least five (5) years after making the final entry in  
 20 respect to any premium finance agreement. The preservation of records in  
 21 photographic form shall constitute compliance with this requirement.
- 22 (3) For the purpose of determining market conduct, business practices, financial  
 23 condition, ability to fulfill and manner of fulfillment of its obligations, the nature of  
 24 its operations and compliance with law, the commissioner~~[executive director]~~ shall  
 25 examine the affairs, transactions, accounts, records and assets of each licensed  
 26 premium finance company as often as reasonably necessary.
- 27 (4) Premium finance companies shall be subject to the provisions of KRS 304.2-220,



304.2-230, 304.2-240, 304.2-250, 304.2-260, 304.2-270, 304.2-280, 304.2-290, 304.2-300, and Subtitle 2 of this chapter for determining financial condition, market conduct, and business practices.

→Section 1412. KRS 304.30-070 is amended to read as follows:

The commissioner~~[executive director]~~ shall have the authority to make and enforce such reasonable rules and regulations as may be necessary to make effective the provisions of this subtitle and to establish the manner in which licensees shall conduct their business, but such rules and regulations shall not be contrary to nor inconsistent with the provisions of this subtitle.

→Section 1413. KRS 304.32-045 is amended to read as follows:

(1) Any nonprofit hospital, medical-surgical, dental and health service corporation subject to the provisions of this subtitle, possessed of admitted assets in excess of all liabilities at least equal to the original surplus required of a domestic mutual insurance company transacting the same kind or kinds of business may, at its option and without reincorporation, adopt and become subject to the provisions of Subtitle 24 of this chapter governing domestic mutual insurers in lieu of this subtitle; provided, however, that upon becoming subject to the provisions of Subtitle 24 of this chapter, as hereinafter provided, such companies may continue to provide services to their present or like services to future members and subscribers and may make provision for the payment for health care services directly to hospitals or other agencies or institutions or persons rendering such health care service or related services or may make direct payment to the member or subscriber.

(2) Any nonprofit hospital, medical-surgical, dental and health service corporation subject to the provisions of this subtitle may adopt and become subject to the provisions of Subtitle 24 of this chapter by the adoption of a resolution by its board of directors declaring the election of said nonprofit hospital, medical-surgical, dental and health service corporation to become subject to the provisions of Subtitle

24 of this chapter governing domestic mutual insurers, and after the adoption of such resolution the board of directors shall adopt such amendments to the articles of incorporation and bylaws of the nonprofit hospital, medical-surgical, dental and health service corporation as shall be necessary and file the same with the commissioner~~executive director~~ of the Department~~Office~~ of Insurance of the Commonwealth of Kentucky. Upon such filing, said nonprofit hospital, medical-surgical, dental and health service corporation shall no longer be subject to the provisions of this subtitle, but shall be subject to Subtitle 24 of this chapter governing domestic mutual insurers and shall honor all legitimate claims presented by its member policyholders under the terms and conditions of its policy who have incurred claims in any private hospital with acute care in the State of Kentucky as long as the hospital is duly licensed and certified by the State of Kentucky; provided, however, that group certificate holders may also be members of the insurer, if so specified in the bylaws of the insurer; and further provided that the conversion of a nonprofit hospital, medical-surgical, dental and health service corporation, subject to this subtitle, into a domestic mutual insurance company shall not impair the rights or obligations of the nonprofit hospital, medical-surgical, dental and health service corporation or its members on any contract heretofore or hereafter made.

➔Section 1414. KRS 304.32-050 is amended to read as follows:

- (1) Whenever any number of persons shall associate to form a corporation for any of the purposes in KRS 304.32-030, they shall submit proposed articles of incorporation in triplicate to the commissioner~~executive director~~ for examination. After being approved by the commissioner~~executive director~~ and the Attorney General, the articles shall be filed in the office of the Secretary of State, who shall issue a certificate of incorporation pursuant to the provisions of KRS Chapter 273.
- (2) When not less than the amount required by KRS 304.32-140 is deposited with the

1 commissioner~~[executive director]~~, he or she shall cause an examination to be made  
 2 either by the commissioner~~[himself]~~ or some disinterested person, especially  
 3 appointed by him or her for the purpose, who shall certify that the corporation has  
 4 complied with the provisions of this subtitle. The certificate shall be filed in the  
 5 office of the commissioner~~[executive director]~~, who shall issue a certificate of  
 6 authority to the corporation.

- 7 (3) Whenever any such corporation shall desire to amend its articles of incorporation, it  
 8 shall file its articles of amendment with the commissioner~~[executive director]~~  
 9 before filing them with the Secretary of State. When the commissioner~~[executive~~  
 10 ~~director]~~ shall find the articles of amendment to have been legally adopted, the  
 11 articles of amendment shall be filed with the Secretary of State.

12 ➔Section 1415. KRS 304.32-090 is amended to read as follows:

- 13 (1) Corporations subject to the provisions of this subtitle doing business in this state on  
 14 June 18, 1970, or which thereafter do business in this state, shall make and file  
 15 annually with the commissioner~~[executive director]~~, on or before the first day of  
 16 March of each year, a statement under oath upon a form to be prescribed by the  
 17 commissioner~~[executive director]~~, stating the amount of all membership dues, or  
 18 subscriber fees, collected in this state by the corporation during the year ending the  
 19 last day of December next preceding; the amounts actually paid during the year for  
 20 hospital, medical-surgical, dental and other health services for the subscribers or  
 21 members of the corporation, and the amounts placed in established reserves for  
 22 cases billed but not yet paid, unreported and unbilled cases, retroactive cost  
 23 adjustments, and membership dues or fees paid in advance but not yet earned.

- 24 (2) The commissioner~~[executive director]~~ shall require that domestic companies  
 25 subject to this subtitle file quarterly statements according to the form and  
 26 instructions approved by the National Association of Insurance Commissioners.

27 ➔Section 1416. KRS 304.32-110 is amended to read as follows:

1 No corporation subject to the provisions of this subtitle shall transact any business in this  
 2 state unless it shall first procure from the commissioner~~[executive-director]~~ a certificate  
 3 of authority stating that the requirements of the laws of this state have been complied with  
 4 and authorizing it to do business. The certificate of authority shall expire on the last day  
 5 of February of each year and shall be renewed annually if the corporation has continued to  
 6 comply with the provisions of this subtitle.

7 ➔Section 1417. KRS 304.32-120 is amended to read as follows:

8 When the annual statement of a corporation subject to the provisions of this subtitle shall  
 9 have been filed and all fees due from the corporation shall have been paid, the  
 10 corporation's certificate of authority to do business in this state shall automatically be  
 11 extended until such time as the commissioner~~[executive-director]~~ refuses to relicense the  
 12 corporation.

13 ➔Section 1418. KRS 304.32-130 is amended to read as follows:

14 The commissioner~~[executive-director]~~ shall not issue or renew a certificate of authority to  
 15 any corporation operating or proposing to operate a nonprofit hospital, medical-surgical,  
 16 dental, or other health service plan unless:

- 17 (1) The subscription or membership certificates which the corporation offers to its  
 18 subscribers or members, together with a schedule of the dues and fees to be paid by  
 19 subscribers or members, or the formula for developing dues or fees, has been filed  
 20 with the commissioner~~[executive-director]~~ in accordance with the provisions of  
 21 KRS 304.32-160.
- 22 (2) The schedule of the dues and fees to be paid by subscribers or members is one  
 23 which will enable the corporation to meet the expenses of the hospital, medical-  
 24 surgical, and other health services which are made available to its subscribers or  
 25 members without impairing the guarantee fund required by KRS 304.32-140, and  
 26 one which will not result in an accumulation of excess reserves over and above  
 27 reserves established for claims in process, unreported and unbilled claims,

retroactive cost adjustment to the purveyors of hospital, medical-surgical, and other health services and membership dues or fees received in advance but not yet earned. So long as a corporation's unencumbered reserve or surplus over and above the required reserves specified in this section do not exceed a sum equal to one-half (1/2) of the corporation's total membership dues or subscription fees received during the immediate preceding calendar year, the unencumbered reserve or surplus shall not be deemed an excessive accumulation for the purposes of this section.

➔Section 1419. KRS 304.32-140 is amended to read as follows:

- (1) No corporation subject to provisions of this subtitle shall be permitted to do any business in this state unless, in addition to the other requirements of law, it shall have and maintain liquid reserves in an amount not less than five percent (5%) of the corporation's subscription income collected in the preceding year not exceeding two million dollars (\$2,000,000), plus two and one-half percent (2.5%) of income exceeding two million dollars (\$2,000,000) but not exceeding ten million dollars (\$10,000,000), plus one percent (1%) of income exceeding ten million dollars (\$10,000,000); but in no event shall reserves be less than five hundred thousand dollars (\$500,000). All corporations subject to the provisions of this subtitle shall place on deposit with the commissioner~~executive director~~ a guarantee fund of cash or approved securities in an amount determined by this formula, but not less than five hundred thousand dollars (\$500,000) nor more than one million five hundred thousand dollars (\$1,500,000). Any amount of liquid reserves required by this subsection in excess of one million five hundred thousand dollars (\$1,500,000) shall be maintained by the corporation at all times, but shall not be required to be placed on deposit, provided that the corporation shall be allowed a period of five (5) years after July 15, 1982, to establish the liquid reserves and deposit the guarantee fund with the commissioner~~executive director~~. A corporation subject to the provisions of this subtitle shall at all times comply with the risk-based capital

1 requirements as established in administrative regulations promulgated by the  
 2 commissioner~~[executive director]~~.

3 (2) The cash or securities representing the guarantee fund required by this section shall  
 4 be acceptable to the commissioner~~[executive director]~~ and the securities shall be  
 5 negotiable securities.

6 (3) The investments of a corporation subject to the provisions of this subtitle shall be  
 7 the same kind of investments which life insurance companies are authorized to  
 8 have.

9 ➔Section 1420. KRS 304.32-160 is amended to read as follows:

10 (1) On or after June 18, 1970, no corporation subject to the provisions of this subtitle  
 11 shall deliver or issue for delivery in this state any subscription certificate or  
 12 membership certificate describing health benefits available, or any indorsement,  
 13 rider, or application which becomes a part thereof, or the schedule of rates, dues,  
 14 fees, or other periodic charges, to be paid by subscribers or members, until a copy of  
 15 such form has been filed with and approved by the commissioner~~[executive~~  
 16 ~~director]~~.

17 (2) At the expiration of thirty (30) days the form so filed shall be deemed approved  
 18 unless prior thereto it has been affirmatively approved or disapproved by order of  
 19 the commissioner~~[executive director]~~, or a hearing has been scheduled by order of  
 20 the commissioner~~[executive director]~~. In the event that a hearing is held, the thirty  
 21 (30) day waiting period shall begin anew after the close of such hearing. Approval  
 22 of any such form by the commissioner~~[executive director]~~ shall constitute a waiver  
 23 of any unexpired portion of such waiting period. The commissioner~~[executive~~  
 24 ~~director]~~ may extend by not more than an additional thirty (30) day period within  
 25 which the commissioner~~[he]~~ may so affirmatively approve or disapprove any such  
 26 form, by giving notice to the insurer of such extension before expiration of the  
 27 initial thirty (30) day period. At the expiration of any such period as so extended,

1 and in the absence of such prior affirmative approval or disapproval, any such form  
 2 shall be deemed approved. The commissioner~~[executive director]~~ may at any time  
 3 withdraw any such approval. Any notice of the commissioner~~[executive director]~~  
 4 withdrawing a previous approval shall state the grounds therefor and the particulars  
 5 thereof in such detail as reasonable to inform the insurer thereof. Any such  
 6 withdrawal of a previously approved form shall be effective at the expiration of  
 7 such period, not less than thirty (30) days after the giving of the notice of  
 8 withdrawal, as the commissioner~~[executive director]~~ shall in such notice prescribe.

9 (3) The commissioner's~~[executive director's]~~ order disapproving any form or  
 10 withdrawing previous approval shall state the grounds for disapproval or  
 11 withdrawal.

12 (4) The commissioner~~[executive director]~~ may, by order, exempt from the  
 13 requirements of this section for so long as he or she deems proper, any document or  
 14 form specified in the order, to which in his or her opinion this section may not  
 15 practicably be applied, or the filing and approval of which are, in his or her opinion,  
 16 not desirable or necessary for the protection of the public.

17 ➔Section 1421. KRS 304.32-210 is amended to read as follows:

18 (1) Nonprofit hospital, medical-surgical, dental, and health service corporations shall be  
 19 subject to the provisions of KRS 304.2-210, 304.2-220, 304.2-230, 304.2-240,  
 20 304.2-250, 304.2-260, 304.2-270, 304.2-280, 304.2-290, 304.2-300, and Subtitle 2  
 21 of this chapter for determining financial condition, market conduct, and business  
 22 practice.

23 (2) Each corporation subject to the provisions of this subtitle may own and invest or  
 24 have invested any of its funds in its principal office building not to exceed an  
 25 amount which would reduce its surplus, exclusive of the investment, below  
 26 \$50,000, unless approved by the commissioner~~[executive director]~~.

27 ➔Section 1422. KRS 304.32-240 is amended to read as follows:

1 Any individual subscriber or member of a corporation subject to the provisions of this  
 2 subtitle who believes himself or herself to be aggrieved by any act or omission of a  
 3 corporation or its officers, trustees, directors, agents, or representatives, may file a  
 4 statement in writing of his or her grievance in the office of the commissioner~~[executive~~  
 5 ~~director]~~, and the commissioner~~[executive director]~~ in his or her discretion may make an  
 6 investigation of the grievance. Investigation by the commissioner~~[executive director]~~  
 7 shall not act as a bar to any suit in a court of competent jurisdiction instituted by any  
 8 member or subscriber, or as a bar to any defense by the corporation.

9 ➔Section 1423. KRS 304.32-250 is amended to read as follows:

10 The commissioner~~[executive director]~~ may promulgate reasonable rules and regulations  
 11 not inconsistent with the provisions of this subtitle that the commissioner~~[he]~~ deems  
 12 necessary for the proper administration of this subtitle.

13 ➔Section 1424. KRS 304.32-260 is amended to read as follows:

14 Nothing contained in this subtitle shall be construed to affect or apply to hospitals, or  
 15 other licensed health care institutions, nor to any individuals, partnerships, associations,  
 16 or corporations which are the direct purveyors of health services; nor shall it be construed  
 17 to limit in any way the rights of hospitals, or other licensed health care institutions or  
 18 purveyors of health services to establish methods of payment directly with purchasers of  
 19 their services; but the commissioner~~[executive director]~~ may require from any institution  
 20 or purveyor of medical services information that will enable him or her to determine  
 21 whether arrangements for payment of medical services are subject to the provisions of  
 22 this subtitle.

23 ➔Section 1425. KRS 304.32-270 is amended to read as follows:

24 Nonprofit hospital, medical-surgical, dental, and health service corporations shall be  
 25 subject to the provisions of this subtitle, and to the following provisions of this code, to  
 26 the extent applicable and not in conflict with the express provisions of this subtitle:

27 (1) Subtitle 1 -- Scope -- General Definitions and Provisions;



- 1 (2) Subtitle 2 -- Commissioner of the Department of Insurance~~[Executive Director]~~;
- 2 (3) Subtitle 7 -- Investments;
- 3 (4) Subtitle 8 -- Administration of Deposits;
- 4 (5) Subtitle 12 -- Trade Practices and Frauds;
- 5 (6) Subtitle 25 -- Continuity of Management;
- 6 (7) Subtitle 33 -- Insurers Rehabilitation and Liquidation;
- 7 (8) Subtitle 18 -- KRS 304.18-110, 304.18-120 -- Group Conversion and KRS 304.18-
- 8 045;
- 9 (9) Subtitle 4 -- Fees and Taxes;
- 10 (10) Subtitle 99 -- Penalties;
- 11 (11) Subtitle 14 -- KRS 304.14-500 to 304.14-560;
- 12 (12) Subtitle 17A -- Health Benefit Plans;
- 13 (13) Subtitle 17B -- Kentucky Access;
- 14 (14) Subtitle 9 -- Agents, Consultants, Solicitors and Adjusters; and
- 15 (15) Subtitle 3 -- Authorization of Insurers and General Requirements.

16 ➔Section 1426. KRS 304.32-315 is amended to read as follows:

17 Any private employer doing business in this state who provides for his employees, on a  
 18 self-insured basis, hospital or surgical benefits shall be subject to KRS 304.14-135.  
 19 Failure to accept forms prescribed by the commissioner~~[executive director]~~ shall be  
 20 punishable pursuant to KRS 304.99-010.

21 ➔Section 1427. KRS 304.32-320 is amended to read as follows:

22 Any private employer doing business in this state who provides for his or her employees  
 23 on a self-insured basis hospital or surgical benefits shall notify the Department~~[Office]~~ of  
 24 Insurance of the existence of the program within sixty (60) days of June 17, 1978. Any  
 25 employer doing business in this state who implements for his or her employees on a self-  
 26 insured basis a plan for providing hospital or surgical benefits shall notify the  
 27 Department~~[Office]~~ of Insurance not less than thirty (30) days prior to implementing such

1 plan, and shall include in the notice the name of any outside third-party administrator.  
 2 Any change in third-party administrators shall be reported to the Department~~[Office]~~ of  
 3 Insurance within thirty (30) days of the change. The Department~~[Office]~~ of Insurance  
 4 shall make this information available upon request.

5 ➔ Section 1428. KRS 304.33-010 is amended to read as follows:

6 (1) Short title. This subtitle may be cited as the "Insurers Rehabilitation and Liquidation  
 7 Law."

8 (2) Construction. No limitation of powers. This subtitle shall not be interpreted to limit  
 9 the powers granted the commissioner~~[executive director]~~ by other provisions of the  
 10 law.

11 (3) Liberal construction. This subtitle shall be liberally construed to effect the purpose  
 12 stated in subsection (4) of this section.

13 (4) Purpose. The purpose of this subtitle is the protection of the interests of insureds,  
 14 creditors, and the public generally, with minimum interference with the normal  
 15 prerogative of proprietors, through:

16 (a) Early detection of any potentially dangerous condition in an insurer, and  
 17 prompt application of appropriate corrective measures, neither unduly harsh  
 18 nor subject to the kind of publicity that would needlessly damage or destroy  
 19 the insurer;

20 (b) Improved methods for rehabilitating insurers, by enlisting the advice and  
 21 management expertise of the insurance industry;

22 (c) Enhanced efficiency and economy of liquidation, through the consolidation of  
 23 matters relating to the liquidation under the supervision of a single court so as  
 24 to avoid divergent rulings by a multiplicity of judicial tribunals and through  
 25 clarification and specification of the law, to minimize legal uncertainty and  
 26 litigation;

27 (d) Equitable apportionment of any unavoidable loss;

- 1 (e) Lessening the problems of interstate rehabilitation and liquidation by  
 2 facilitating cooperation between states in the liquidation process, and by  
 3 extension of the scope of personal jurisdiction over debtors of the insurer  
 4 outside this state;
- 5 (f) Regulation of the insurance business by the impact of the law relating to  
 6 delinquency procedures and substantive rules on the entire insurance business;  
 7 and
- 8 (g) Provision for a comprehensive scheme for the supervision, rehabilitation, and  
 9 liquidation of insurance companies and those subject to this subtitle as part of  
 10 the regulation of the business of insurance, insurance industry, and insurers in  
 11 this state. Proceedings in cases of insurer insolvency and delinquency shall be  
 12 deemed an integral aspect of the business of insurance and are of vital public  
 13 interest and concern.
- 14 (5) All persons who voluntarily transact business with an insurer which is subsequently  
 15 the subject of a delinquency proceeding under this subtitle shall be conclusively  
 16 presumed to have transacted business with the intent that the provisions of this  
 17 subtitle would control if there is any delinquency proceeding in this state.
- 18 (6) If there is a delinquency proceeding under this subtitle, the provisions of this  
 19 subtitle shall govern those proceedings, and all conflicting contractual provisions  
 20 contained in any contract between the insurer which is subject to the delinquency  
 21 proceeding and any third party shall be deemed subordinated to the provisions of  
 22 this subtitle. However, notwithstanding the foregoing, in any delinquency  
 23 proceeding commenced against an insurer after July 15, 1996, nothing in this  
 24 subtitle shall be construed to subordinate or restrict the rights of parties to submit  
 25 their disputes to arbitration pursuant to a contractual arbitration clause contained in  
 26 a reinsurance agreement.

27 ➔Section 1429. KRS 304.33-030 is amended to read as follows:

1 For the purposes of this subtitle:

- 2 (1) "Agent" means all persons who have collected or are holding premiums or other  
3 assets of the insurer, including, but not limited to, brokers, intermediaries, managing  
4 general agents, underwriting managers, and reinsurance managers, and any other  
5 persons who have entered into a fiduciary relationship with the insurer subject to  
6 delinquency proceedings, including, but not limited to, persons holding licenses  
7 under Subtitles 9, 32, 38, and 43 of KRS Chapter 304.
- 8 (2) "Commissioner~~[Executive director]~~" means the commissioner~~[executive director]~~  
9 of the Department of Insurance of this state.
- 10 (3) "Receiver" means receiver, liquidator, rehabilitator, or conservator, as the context  
11 requires.
- 12 (4) "Insurer" has the meaning defined in Subtitle 1 of this chapter. For purposes of this  
13 subtitle, all other persons included under KRS 304.33-020 shall be deemed to be  
14 insurers.
- 15 (5) "Delinquency proceeding" means any proceeding commenced against an insurer for  
16 the purpose of liquidating, rehabilitating, reorganizing, or conserving such insurer,  
17 and any summary proceeding under KRS 304.33-110 to 304.33-130, inclusive.
- 18 (6) "State" has the meaning defined in Subtitle 1 of this chapter.
- 19 (7) "Foreign country" means territory not in any state.
- 20 (8) "Domiciliary state" means the state in which an insurer is incorporated or organized  
21 or, in the case of an alien insurer, the state in which the insurer has, at the  
22 commencement of delinquency proceedings, the largest amount of its assets held in  
23 trust and on deposit for the benefit of policyholders and creditors in the United  
24 States.
- 25 (9) "Ancillary state" means any state other than a domiciliary state.
- 26 (10) "Reciprocal state" means any state other than this state in which in substance and  
27 effect subsection (1) of KRS 304.33-200, subsections (1) and (3) of KRS 304.33-

1 530, KRS 304.33-540, and KRS 304.33-560 to 304.33-590, inclusive, are in force,  
 2 and in which provisions are in force requiring that the ~~commissioner~~executive  
 3 ~~director~~] be the receiver of a delinquent insurer, and in which some provision exists  
 4 for the avoidance of fraudulent conveyances and preferential transfers.

5 (11) "General assets" means all property, real, personal or otherwise, not specifically  
 6 mortgaged, pledged, deposited or otherwise encumbered for the security or benefit  
 7 of specified persons or limited classes of persons, and as to specifically encumbered  
 8 property the term includes all such property or its proceeds in excess of the amount  
 9 necessary to discharge the sums secured thereby, except as otherwise expressly  
 10 provided in this subtitle. Assets held in trust and on deposit for the security or  
 11 benefit of all policyholders or all policyholders and creditors, in more than a single  
 12 state, shall be treated as general assets.

13 (12) "Reinsurance intermediary" means any person who acts as a broker in soliciting,  
 14 negotiating, or procuring the making of any reinsurance contract or binder, or acts  
 15 as an agent in accepting any reinsurance contract or binder on behalf of an insurer.

16 (13) "Court" means the Franklin Circuit Court.

17 (14) "Preferred claim" means any claim with respect to which the law accords priority of  
 18 payment from the general assets of the insurer.

19 (15) "Special deposit claim" means any claim secured by a deposit made pursuant to law  
 20 for the security or benefit of one (1) or more limited classes of persons, but not  
 21 including any claim secured by general assets.

22 (16) "Secured claim" means any claim secured by mortgage, trust deed, pledge, deposit  
 23 as security, escrow or otherwise, but not including special deposit claims or claims  
 24 against general assets including, but not limited to, claims of setoff, counterclaim,  
 25 or recoupment against obligations to pay premiums to the insurer. The term also  
 26 includes claims which have become liens upon specific assets by reason of judicial  
 27 process, except where they have been invalidated.

- 1 (17) "Premium" has the meaning set forth in Subtitle 14 of this chapter.
- 2 (18) "Insolvency" means that the insurer is unable to pay its debts or meet its obligations  
3 as they mature or that its assets do not exceed its liabilities plus the greater of:  
4 (a) Any capital and surplus required by law to be constantly maintained, or  
5 (b) Its authorized and issued capital stock. For purposes of this subsection,  
6 "assets" includes one-half (1/2) of the maximum total assessment liability of  
7 the policyholders of the insurer, and "liabilities" includes reserves required by  
8 law. For policies issued on the basis of unlimited assessment liability, the  
9 maximum total liability, for purposes of determining solvency only, shall be  
10 deemed to be that amount that could be obtained if there were one hundred  
11 percent (100%) collection of an assessment at the rate of ten (10) mills.
- 12 (19) "Fair consideration" is given for property or an obligation:  
13 (a) When in exchange for such property or obligation, as a fair equivalent  
14 therefor, and in good faith, property is conveyed or services are rendered or  
15 obligation is incurred or an antecedent debt is satisfied; or  
16 (b) When such property or obligation is received in good faith to secure a present  
17 advance or antecedent debt in amount not disproportionately small as  
18 compared to the value of the property or obligation obtained.
- 19 (20) "Creditor" is a person having any claim, whether matured or unmatured, liquidated  
20 or unliquidated, secured or unsecured, absolute, fixed or contingent.
- 21 (21) "Transfer" includes the sale and every other method, direct or indirect, of disposing  
22 of or of parting with property or with an interest therein or with the possession  
23 thereof or of fixing a lien upon property or upon an interest therein, absolutely or  
24 conditionally, voluntarily or involuntarily, by or without judicial proceedings. The  
25 retention of a security title to property delivered to a debtor shall be deemed a  
26 transfer suffered by the debtor.
- 27 (22) "Doing business" has the meaning designated in Subtitle 1.

1 (23) "Guaranty association" means the Kentucky Insurance Guaranty Association, the  
 2 Kentucky Life and Health Insurance Guaranty Association and any other similar  
 3 entity now or hereafter created by the Legislature of this state for the payment of  
 4 claims of insolvent insurers. "Foreign guaranty association" means any similar  
 5 entities now in existence in, or hereafter created by the legislature of, any other  
 6 state.

7 ➔Section 1430. KRS 304.33-040 is amended to read as follows:

8 (1) Actions by commissioner~~[executive director]~~. Except as provided in subsection (2)  
 9 of this section, and subsection (1) of KRS 304.33-230, no delinquency proceeding  
 10 shall be commenced under this subtitle by anyone other than the  
 11 commissioner~~[executive director]~~ and no court shall have jurisdiction to entertain,  
 12 hear or determine any proceeding commenced by any other person.

13 (2) Action by judgment creditors:

14 (a) The judgment creditors of three (3) or more unrelated judgments may  
 15 commence proceedings under the conditions and in the manner prescribed in  
 16 this subsection, by serving notice upon the commissioner~~[executive director]~~  
 17 and the insurer of intention to file a petition for liquidation under KRS  
 18 304.33-190 or 304.33-520. Each of the judgments must:

- 19 1. Have been rendered against the insurer by a court in this state having  
 20 jurisdiction over the subject matter and the insurer;
- 21 2. Have been entered more than sixty (60) days before the service of  
 22 notice;
- 23 3. Not have been paid in full;
- 24 4. Not be the subject of a valid contract between the insurer and any  
 25 judgment creditor for payment of the judgment, unless the contract has  
 26 been breached by the insurer; and
- 27 5. Not be a judgment on which an appeal or review is pending.

(b) If any one (1) of the judgments in favor of a petitioning creditor remains unpaid for thirty (30) days after service of the notice, and the commissioner~~executive director~~ has not then filed a petition for liquidation, the creditor may file in the name of the commissioner~~executive director~~ a verified petition for liquidation of the insurer under KRS 304.33-190 or 304.33-520 alleging the conditions stated in this subsection. The commissioner~~executive director~~ shall be served and joined in the action.

(3) Exclusiveness of proceedings.

(a) The court shall have exclusive jurisdiction to entertain, hear, or determine all matters in any way relating to any delinquency proceeding under this subtitle, including, but not limited to, all disputes involving purported assets of the insurer.

(b) Notwithstanding the provisions of paragraph (a) of this subsection, the court may authorize the receiver to seek injunctive or other appropriate relief from other courts, either within or without this state, if, in the opinion of the court, this action will be an aid to any delinquency proceeding.

(c) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this subtitle. No provisions in this subtitle shall be construed to preclude the court from, on its own motion, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules or to prevent an abuse of process.

(4) Change of venue. Venue for proceedings arising under this subtitle shall be laid initially as specified in the sections providing for such proceedings. All other actions and proceedings initiated by the receiver may be commenced and tried where the delinquency proceedings are then pending, or where venue would be laid by KRS Chapter 452 or other applicable law. All other actions and proceedings against the receiver shall be commenced and tried in the county where the



delinquency proceedings are pending. At any time upon motion of any party, venue may be changed by order of the court or the presiding judge thereof to any other Circuit Court in this state, as the convenience of the parties and witnesses and the ends of justice may require. This subsection relates only to venue and is not jurisdictional.

(5) Personal jurisdiction, grounds for. In addition to other grounds for jurisdiction provided by the law of this state, a court of this state having jurisdiction of the subject matter shall have jurisdiction over a person served in an action brought by the receiver of a domestic insurer or an alien insurer domiciled in this state:

(a) If the person served is obligated to the insurer in any way as an incident to any agency or brokerage arrangement that may exist or has existed between the insurer and the agent or broker, in any action on or incident to the obligation;

(b) If the person served is a reinsurer who has at any time issued a contract of reinsurance to an insurer against which a rehabilitation or liquidation order is in effect when the action is commenced, or is an agent or broker of or for the reinsurer, in any action on or incident to the reinsurance contract;

(c) If the person served is or has been an officer, manager, trustee, organizer, promoter or person in a position of comparable authority or influence in an insurer against which a rehabilitation or liquidation order is in effect when the action is commenced, in any action resulting from the relationship with the insurer;

(d) If the person served is or was at the time of the institution of the delinquency proceedings holding assets in which the receiver claims an interest on behalf of the insurer;

(e) If the person served has filed a claim against the insurer under the provisions of KRS 304.33-360;

(f) If the person served is otherwise amenable to the exercise of personal

1 jurisdiction by the courts of this state under the provisions of the due process  
2 clause of the Fourteenth Amendment to the United States Constitution; or

3 (g) If the person served is obligated to the insurer in any way in any action on or  
4 incident to the obligation.

5 (6) Service of process.

6 (a) If personal jurisdiction is authorized by this section, service of process may be  
7 made on the person, or any agent of the person, in the county of this state  
8 where he or she may be found, or on the Secretary of State who, for this  
9 purpose, shall be deemed to be the statutory agent of the person.

10 (b) The clerk of the court in which the action is brought shall issue a summons  
11 against the defendant named in the complaint. The clerk shall execute the  
12 summons by sending by certified mail a true copy to the Secretary of State and  
13 shall also mail with the summons an attested copy of the complaint. The  
14 Secretary of State shall, within seven (7) days of receipt thereof in his or her  
15 office, mail the copy of the summons and complaint to the defendant at the  
16 address given in the complaint. The letter shall be posted by certified mail,  
17 return receipt requested, and shall bear the return address of the Secretary of  
18 State. The clerk shall make the usual return to the court, and, in addition, the  
19 Secretary of State shall make a return to the court showing that the acts  
20 contemplated by this statute have been performed, and shall attach to his or  
21 her return the registry receipt, if any. Summons shall be deemed to be served  
22 upon the return of the Secretary of State and the action shall proceed as  
23 provided in the Rules of Civil Procedure.

24 (c) The clerk mailing the summons to the Secretary of State shall mail to him or  
25 her, at the same time, a fee of ten dollars (\$10), which shall be taxed as costs  
26 in the action.

27 (7) Forum non conveniens. If the court on motion of any party finds that any action

1 commenced under subsection (5) of this section should as a matter of substantial  
 2 justice be tried in a forum outside this state, the court may enter an order to stay  
 3 further proceedings on the action in this state.

4 ➔Section 1431. KRS 304.33-070 is amended to read as follows:

5 (1) Duty to cooperate. Any officer, manager, trustee or agent of any insurer, and any  
 6 other person with executive authority over or in charge of any segment of the  
 7 insurer's affairs or in possession of property to which the commissioner~~executive~~  
 8 ~~director~~ has a claim shall cooperate with the commissioner~~executive director~~, or  
 9 anyone acting on behalf of the commissioner~~executive director~~, in any  
 10 delinquency proceeding. "To cooperate" includes, but is not limited to, the  
 11 following:

12 (a) To reply promptly in writing to any inquiry from the commissioner~~executive~~  
 13 ~~director~~ requesting such a reply; and

14 (b) To make available and deliver to the commissioner~~executive director~~ any  
 15 books, accounts, documents, or other records, or information or property of or  
 16 pertaining to the insurer and in his or her possession, custody or control.

17 (2) Duty not to obstruct. No person shall obstruct or interfere with the  
 18 commissioner~~executive director~~ in the conduct of any delinquency proceeding.

19 (3) Any person who fails to cooperate with or obstructs the efforts of the  
 20 commissioner~~executive director~~ in the conduct of any delinquency proceeding  
 21 shall have denied any claims the person has filed pursuant to KRS 304.33-360 and  
 22 shall also be subject to such other sanctions as the court may impose.

23 (4) Right to defend. This section shall not render it illegal to resist by legal proceedings  
 24 the petition for liquidation or other delinquency proceedings, or other orders.

25 ➔Section 1432. KRS 304.33-080 is amended to read as follows:

26 In any proceeding under this subtitle the commissioner~~executive director~~ and his or her  
 27 deputies shall be responsible on their official bonds for the faithful performance of their

1 duties. If the court deems it desirable for the protection of the assets, it may at any time  
 2 require an additional bond from the commissioner~~[executive director]~~ or his or her  
 3 deputies.

4 ➔Section 1433. KRS 304.33-100 is amended to read as follows:

5 Every proceeding commenced before June 18, 1970, is deemed to have commenced under  
 6 this subtitle for the purpose of conducting the proceeding thereafter, except that in the  
 7 discretion of the commissioner~~[executive director]~~ the proceeding may be continued, in  
 8 whole or in part, as it would have been continued had this subtitle not been enacted.

9 ➔Section 1434. KRS 304.33-105 is amended to read as follows:

10 Every proceeding heretofore commenced under the laws in effect before July 13, 1990,  
 11 shall be deemed to have commenced under this subtitle for the purpose of conducting the  
 12 proceeding henceforth, except that in the discretion of the commissioner~~[executive~~  
 13 ~~director]~~ the proceeding may be continued, in whole or in part, as it would have been  
 14 continued had this subtitle not been enacted.

15 ➔Section 1435. KRS 304.33-110 is amended to read as follows:

- 16 (1) Whenever the commissioner~~[executive director]~~ has reasonable cause to believe,  
 17 and determines that any insurer has committed or engaged in, or is committing or  
 18 engaging in or is about to commit or engage in any act, practice, or transaction that  
 19 would subject it to formal delinquency proceedings under this subtitle, the  
 20 commissioner~~[he]~~ may make and serve upon the insurer and any other persons  
 21 involved an emergency order in accordance with KRS 13B.125, other than seizure  
 22 orders under KRS 304.33-120, as is reasonably necessary to correct, eliminate, or  
 23 remedy the conduct, condition, or ground. If the emergency order is for a restoration  
 24 of or addition to capital, it shall be carried out as provided in KRS 304.24-350.
- 25 (2) The commissioner~~[executive director]~~ may apply for and any court of general  
 26 jurisdiction may grant, restraining orders, temporary and permanent injunctions, and  
 27 other orders as are deemed necessary to enforce an emergency order.

1       ➔Section 1436. KRS 304.33-115 is amended to read as follows:

2       The commissioner~~[executive director]~~, the commissioner's~~[his]~~ special deputies, and all  
 3       others appointed to act on the commissioner's~~[his]~~ behalf in connection with any  
 4       delinquency proceedings under this subtitle shall not be liable for any acts or omissions  
 5       done in good faith and within the scope of their authority during the course of the  
 6       delinquency proceedings, including, but not limited to, the settlement of disputed claims,  
 7       and shall be immune from any civil or criminal liability that might otherwise be incurred  
 8       or imposed based upon the acts or omissions.

9       ➔Section 1437. KRS 304.33-120 is amended to read as follows:

10      (1) Issuance. Upon the filing by the commissioner~~[executive director]~~ in any Circuit  
 11      Court in this state of a verified petition alleging any ground that would justify a  
 12      court order for a formal delinquency proceeding against an insurer under this  
 13      subtitle and that the interests of policyholders or creditors will be endangered by  
 14      delay, and setting out the order deemed necessary by the commissioner~~[executive~~  
 15      director], the court may issue forthwith, ex parte and without a hearing, the  
 16      requested order which may (a) direct the commissioner~~[executive director]~~ to take  
 17      possession and control of all or a part of the property, books, accounts, documents  
 18      and other records of an insurer and of the premises occupied by it for the transaction  
 19      of its business, and (b) until further order of the court, enjoin the insurer and its  
 20      officers, managers, agents, and employees from disposition of its property and from  
 21      transaction of its business except with the written consent of the  
 22      commissioner~~[executive director]~~.

23      (2) Duration. The court shall specify in the order what its duration shall be, which shall  
 24      be such time as the court deems necessary for the commissioner~~[executive director]~~  
 25      to ascertain the condition of the insurer. On motion of either party or on its own  
 26      motion, the court may hold such hearings as it deems desirable after such notice as  
 27      it deems appropriate, and may extend, shorten or modify the terms of the seizure

1 order. The court shall vacate the seizure order if the commissioner~~executive~~  
 2 ~~director~~ fails to commence a formal proceeding under this subtitle after having had  
 3 a reasonable opportunity to do so. The issuance of an order of the court pursuant to  
 4 a formal proceeding under this subtitle vacates the seizure order.

- 5 (3) Anticipatory breach. Entry of a seizure order under this section shall not constitute  
 6 an anticipatory breach of any contract of the insurer.

7 ➔Section 1438. KRS 304.33-130 is amended to read as follows:

- 8 (1) Confidentiality of commissioner's~~executive—director's~~ hearings. The  
 9 commissioner~~executive director~~ shall hold all hearings in summary proceedings  
 10 privately unless the insurer requests a public hearing, in which case the hearing shall  
 11 be public.

- 12 (2) Confidentiality of court hearings. The court may hold all hearings in summary  
 13 proceedings and judicial reviews thereof privately in chambers, and shall do so on  
 14 request of the insurer proceeded against.

- 15 (3) Records. In all summary proceedings and judicial reviews thereof, all records of the  
 16 company, other documents, and all Department~~Office~~ of Insurance files and court  
 17 records and papers, so far as they pertain to or are a part of the record of the  
 18 summary proceedings, shall be and remain confidential except as is necessary to  
 19 obtain compliance therewith, unless the court, after hearing arguments from the  
 20 parties in chambers, shall order otherwise, or unless the insurer requests that the  
 21 matter be made public. Until such court order, all papers filed with the clerk of the  
 22 court shall be held by him or her in a confidential file.

- 23 (4) Parties. If at any time it appears to the court that any person whose interest is or will  
 24 be substantially affected by an order did not appear at the hearing and has not been  
 25 served, the court may order that notice be given and the proceedings be adjourned to  
 26 give him or her opportunity to appear on such terms as may be just.

27 ➔Section 1439. KRS 304.33-140 is amended to read as follows:

1 (1) The commissioner~~[executive director]~~ may apply by verified petition to the court  
 2 for an order directing the commissioner~~[him]~~ to rehabilitate a domestic insurer or  
 3 an alien insurer domiciled in this state on any one (1) or more of the following  
 4 grounds:

5 (a) Any ground on which the commissioner~~[he]~~ may apply for an order of  
 6 liquidation under KRS 304.33-190, whenever the commissioner~~[he]~~ believes  
 7 that the insurer may be successfully rehabilitated without substantial increase  
 8 in the risk of loss to creditors of the insurer or to the public.

9 (b) That the commissioner~~[executive director]~~ has reasonable cause to believe  
 10 that there has been embezzlement from the insurer, wrongful sequestration or  
 11 diversion of the insurer's assets, forgery or fraud affecting the insurer, or other  
 12 illegal conduct in, by, or with respect to the insurer, that if established would  
 13 endanger assets in an amount threatening the solvency of the insurer.

14 (c) That any one (1) of the following circumstances has occurred and the  
 15 commissioner~~[executive director]~~ has reasonable cause to believe that the  
 16 insurer is insolvent or that assets are endangered in an amount threatening the  
 17 solvency of the insurer:

18 1. That information coming into the commissioner's~~[executive director's]~~  
 19 possession has disclosed substantial and not adequately explained  
 20 discrepancies between the insurer's records and the most recent annual  
 21 report or other official company reports;

22 2. That the insurer has failed to remove any person who in fact has  
 23 executive authority in the insurer, whether an officer, manager, general  
 24 agent, employee, or other person, if the person has been found by the  
 25 commissioner~~[executive director]~~ after notice and hearing to be  
 26 dishonest or untrustworthy in a way affecting the insurer's business;

27 3. That control of the insurer, whether by stock ownership or otherwise,

1 and whether direct or indirect, is in one (1) or more persons found by the  
 2 commissioner~~[executive director]~~ after notice and hearing to be  
 3 dishonest or untrustworthy;

4 4. That any person who in fact has executive authority in the insurer,  
 5 whether an officer, manager, general agent, employee, or other person,  
 6 has refused to be examined under oath by the commissioner~~[executive~~  
 7 ~~director]~~ concerning its affairs, whether in this state or elsewhere, and  
 8 after reasonable notice of the fact the insurer has failed promptly and  
 9 effectively to terminate the employment and status of the person and all  
 10 his or her influence on management;

11 5. That the insurer has refused to submit its books, accounts, documents, or  
 12 other records to the reasonable examination or inspection of the  
 13 commissioner~~[executive director]~~ or the commissioner's~~[his]~~  
 14 authorized representative.

15 (d) That the insurer is or is about to become insolvent.

16 (e) That the insurer is engaging in a systematic practice of reaching settlements  
 17 with and obtaining releases from policyholders or third-party claimants and  
 18 then unreasonably delaying payment of or failing to pay the agreed upon  
 19 settlements.

20 (f) That the insurer is in such condition that the further transaction of business  
 21 would be hazardous, financially or otherwise, to its policyholders, its  
 22 creditors, or the public.

23 (g) That within the previous twelve (12) months the insurer has systematically  
 24 attempted to compromise with its creditors on the ground that it is financially  
 25 unable to pay its claims in full.

26 (h) That without first obtaining the written consent of the  
 27 commissioner~~[executive director]~~, the insurer has transferred, or attempted to



1 transfer, substantially its entire property or business, or has entered into any  
 2 transaction the effect of which is to merge, consolidate, or reinsure  
 3 substantially its entire property or business in or with the property or business  
 4 of any other person.

5 (i) That the insurer or its property has been or is the subject of an application for  
 6 the appointment of a receiver, trustee, custodian, conservator, or sequestrator  
 7 or similar fiduciary of the insurer or its property otherwise than as authorized  
 8 under this subtitle, and that such appointment has been made or is imminent,  
 9 and that such appointment might oust the courts of this state of jurisdiction or  
 10 prejudice orderly delinquency proceedings under this subtitle.

11 (j) That within the previous year the insurer has willfully violated its charter or  
 12 articles of incorporation or any insurance law or regulation of this state, or  
 13 having become aware within the previous year of an unintentional violation  
 14 has failed to take all reasonable steps to remedy the situation resulting from  
 15 the violation and to prevent future violations.

16 (k) That the directors of the insurer are deadlocked in the management of the  
 17 insurer's affairs and that the members or shareholders are unable to break the  
 18 deadlock and that irreparable injury to the insurer, its creditors or its  
 19 policyholders is threatened by reason thereof.

20 (l) That the insurer has failed to file its annual report or other report within the  
 21 time allowed by law, and after written demand by the  
 22 commissioner~~[executive director]~~ has failed to give an adequate explanation  
 23 immediately.

24 (m) That two-thirds (2/3) of the board of directors, or the holders of a majority of  
 25 the shares entitled to vote, or a majority of members or policyholders of an  
 26 insurer subject to control by its members or policyholders, consent to  
 27 rehabilitation under this subtitle.

1 (2) Upon the issuance of an order directing the commissioner~~[executive director]~~ to  
 2 rehabilitate a domestic insurer, the court shall have exclusive jurisdiction over all  
 3 matters relating to the rehabilitation, including, but not limited to, the proper scope  
 4 and application of the provisions of this subtitle to the rehabilitation as well as all  
 5 interpretation and enforceability of all contracts of insurance to which the insurer is  
 6 a party.

7 ➔Section 1440. KRS 304.33-150 is amended to read as follows:

8 (1) Appointment of rehabilitator. An order to rehabilitate the business of a domestic  
 9 insurer, or an alien insurer domiciled in this state, shall appoint the  
 10 commissioner~~[executive director]~~ and his or her successors in office rehabilitator  
 11 and shall direct the rehabilitator forthwith to take possession of the assets of the  
 12 insurer and to administer them under the orders of the court. The filing or recording  
 13 of the order with any county clerk in the state shall impart the same notice as a deed,  
 14 bill of sale, or other evidence of title duly filed or recorded with that county clerk.

15 (2) Any order issued under this section shall require accountings to the court by the  
 16 rehabilitator. Accountings shall be at such intervals as the court specifies in its  
 17 order, but no less frequently than semiannually. Each accounting shall include a  
 18 report concerning the rehabilitator's opinion as to the likelihood that a plan under  
 19 KRS 304.33-160(5) will be prepared by the rehabilitator and the timetable for doing  
 20 so.

21 (3) Anticipatory breach. Entry of an order of rehabilitation shall not constitute an  
 22 anticipatory breach of any contracts of the insurer, and it shall not be grounds for  
 23 revocation or cancellation of any contracts of the insurer.

24 ➔Section 1441. KRS 304.33-160 is amended to read as follows:

25 (1) Special deputy~~[director]~~. The commissioner~~[executive director]~~ as rehabilitator  
 26 shall appoint one (1) or more special deputies, who are active or retired senior  
 27 executives from a successful insurer, and who shall have all the powers and

responsibilities of the rehabilitator granted under this section, and the commissioner~~executive director~~ may employ such counsel, clerks, and assistants as deemed necessary. The compensation of the special deputy, counsel, clerks, and assistants and all expenses of taking possession of the insurer and of conducting the proceedings shall be fixed by the commissioner~~executive director~~, with the approval of the court and shall be paid out of the funds or assets of the insurer. The persons appointed under this section shall serve at the pleasure of the commissioner~~executive director~~. If the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the commissioner~~executive director~~ may advance the costs so incurred out of any appropriation for the maintenance of the Department~~Office~~ of Insurance. Any amounts so advanced for expenses of administration shall be repaid to the commissioner~~executive director~~ for the use of the Department~~Office~~ of Insurance out of the first available money of the insurer.

(2) General power. The rehabilitator may take action as he or she deems necessary or appropriate to reform and revitalize the insurer. He or she shall have all the powers of the directors, officers, and managers, whose authority shall be suspended, except as they are redelegated by the rehabilitator. He or she shall have full power to direct and manage, to hire and discharge employees subject to any contract rights they may have, and to deal with the property and business of the insurer.

(3) Advice from experts. The rehabilitator may consult with and obtain formal or informal advice and aid of insurance experts.

(4) Pursuit of insurer's claims against insiders. If the rehabilitator finds that there has been criminal or tortious conduct or breach of any contractual or fiduciary obligation detrimental to the insurer by any officer, manager, agent, employee, or other person, he or she may pursue all appropriate legal remedies on behalf of the insurer.

1 (5) Reorganization plan. The rehabilitator may prepare a plan for the reorganization,  
 2 consolidation, conversion, reinsurance, merger, or other transformation of the  
 3 insurer. Upon application of the rehabilitator for approval of the plan, and after the  
 4 notice and hearing as the court prescribes, the court may either approve or  
 5 disapprove the plan proposed, or may modify it and approve it as modified. If it is  
 6 approved, the rehabilitator shall carry out the plan. In the case of a life insurer, the  
 7 plan proposed may include the imposition of liens upon the equities of  
 8 policyholders of the insurer, if all rights of shareholders are first extinguished. A  
 9 plan for a life insurer may also propose imposition of a moratorium upon loan and  
 10 cash surrender rights upon policies, for such period and to such an extent as are  
 11 necessary.

12 (6) Fraudulent transfers. The rehabilitator shall have the power to avoid fraudulent  
 13 transfers under KRS 304.33-290 and 304.33-300.

14 ➔ Section 1442. KRS 304.33-190 is amended to read as follows:

15 (1) The commissioner~~[executive director]~~ may apply by petition to the Circuit Court  
 16 for Franklin County or for the county in which the principal office of the insurer is  
 17 located for an order directing him or her to liquidate a domestic insurer or an alien  
 18 insurer domiciled in this state on any one (1) or more of the following grounds:

19 (a) Any ground on which the commissioner~~[he]~~ may apply for an order of  
 20 rehabilitation under KRS 304.33-140, whenever he or she believes that  
 21 attempts to rehabilitate the insurer would substantially increase the risk of loss  
 22 to its creditors, its policyholders or the public, or would be futile, or that  
 23 rehabilitators would serve no useful purpose;

24 (b) That the insurer has commenced, or within the previous year has attempted to  
 25 commence, voluntary liquidation otherwise than under the insurance laws of  
 26 this state;

27 (c) That the holders of two-thirds (2/3) of the shares entitled to vote, or two-thirds

(2/3) of the members or policyholders entitled to vote in an insurer controlled by its members or policyholders, have consented to a petition.

(2) Upon the issuance of an order directing the commissioner~~[executive director]~~ to liquidate a domestic insurer, the court shall have exclusive jurisdiction over all matters relating to the liquidation, including, but not limited to, the proper scope and application of the provisions of this subtitle to the liquidation as well as all interpretation and enforceability of all contracts of insurance to which the insurer is a party.

→ Section 1443. KRS 304.33-200 is amended to read as follows:

(1) Order to liquidate. An order to liquidate the business of a domestic insurer shall appoint the commissioner~~[executive director]~~ and his or her successors in office liquidator and shall direct the liquidator forthwith to take possession of the assets of the insurer and to administer them under the orders of the court. The liquidator shall be vested by operation of law with the title to all of the property, contracts, and rights of action and all of the books and records of the insurer ordered liquidated, wherever located, as of the date of the filing of the petition for liquidation. He or she may recover and reduce the same to possession except that ancillary receivers in reciprocal states shall have, as to assets located in their respective states, the rights and powers which are prescribed in subsection (3) of KRS 304.33-540 for ancillary receivers appointed in this state as to assets located in this state. The filing or recording of the order with any county clerk in this state shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that county clerk.

(2) Fixing of rights.

(a) Upon issuance of the order, the rights and liabilities of any such insurer and of its creditors, policyholders, shareholders, members, and all other persons interested in its estate are fixed as of the date of filing of the petition for

1 liquidation, except as provided in KRS 304.33-210 and 304.33-380.

2 (b) Entry of an order of liquidation shall not constitute an anticipatory breach of  
3 any contracts of the insurer, and it shall not be grounds for rescission,  
4 revocation, or cancellation of any contracts of the insurer in force as of the  
5 date of liquidation, except as provided in KRS 304.33-210.

6 (3) Alien insurer. An order to liquidate the business of an alien insurer domiciled in this  
7 state shall be in the same terms and have the same legal effect as an order to  
8 liquidate a domestic insurer, except that the assets and the business in the United  
9 States shall be the only assets and business included under the order.

10 (4) Declaration of insolvency. At the time of petitioning for an order of liquidation, or  
11 at any time thereafter, the commissioner~~executive director~~ may petition the court  
12 to declare the insurer insolvent, and after such notice and hearing as it deems  
13 proper, the court may make the declaration.

14 ➔Section 1444. KRS 304.33-220 is amended to read as follows:

15 The commissioner~~executive director~~ may petition for an order dissolving the corporate  
16 existence of a domestic insurer or the United States branch of an alien insurer domiciled  
17 in this state at the time the commissioner ~~he~~ applies for a liquidation order. If the court  
18 issues a liquidation order, it also shall order dissolution if the commissioner~~executive~~  
19 ~~director~~ has petitioned for it. The court shall order dissolution of the corporation upon  
20 petition by the commissioner~~executive director~~ at any time after a liquidation order has  
21 been granted. If the dissolution has not previously occurred, it shall be effected by  
22 operation of law upon the discharge of the liquidator.

23 ➔Section 1445. KRS 304.33-230 is amended to read as follows:

24 (1) Petition for federal receiver. Whenever in the commissioner's~~executive director's~~  
25 opinion, liquidation of a domestic insurer or an alien insurer domiciled in this state  
26 would be facilitated by a federal receivership, and when any ground exists upon  
27 which the commissioner~~executive director~~ might petition the court for an order of

1 rehabilitation or liquidation under KRS 304.33-140 or 304.33-190, or if an order of  
 2 rehabilitation or liquidation has already been entered, the commissioner~~executive~~  
 3 ~~director~~] may request the insurance commissioner or other willing resident of  
 4 another state to petition any appropriate federal District Court for the appointment  
 5 of a federal receiver. The commissioner~~executive director~~] may intervene in any  
 6 such action to support or oppose the petition, and may accept appointment as the  
 7 receiver if he or she is so designated. So much of this subtitle shall apply to the  
 8 receivership as can be made applicable and is appropriate. Upon motion of the  
 9 commissioner~~executive director~~], the courts of this state shall relinquish all  
 10 jurisdiction over the insurer for purposes of rehabilitation or liquidation.

- 11 (2) Compliance with federal requirements. If the commissioner~~executive director~~] is  
 12 appointed receiver under this section, he or she shall comply with any requirements  
 13 necessary to give him or her title to and control over the assets and affairs of the  
 14 insurer.

15 ➔Section 1446. KRS 304.33-240 is amended to read as follows:

16 The liquidator shall report to the court monthly, or at other intervals specified by the  
 17 court, on the progress of the liquidation in whatever detail the court orders. The liquidator  
 18 may:

- 19 (1) Appoint a special deputy to act for him or her under this subtitle, and, subject to the  
 20 court's approval, determine his or her compensation. The special deputy shall have  
 21 all powers of the liquidator granted by this section. The special deputy shall serve at  
 22 the pleasure of the liquidator.
- 23 (2) Appoint or engage employees and agents, legal counsel, actuaries, accountants,  
 24 appraisers, consultants, and other personnel he or she deems necessary to assist in  
 25 the liquidation.
- 26 (3) Fix the compensation of persons under subsection (2) of this section, subject to the  
 27 control of the court.

- 1 (4) Defray all expenses of taking possession of, conserving, conducting, liquidating,  
2 disposing of or otherwise dealing with the business and property of the insurer. If  
3 the property of the insurer does not contain sufficient cash or liquid assets to defray  
4 the costs incurred, the liquidator may advance the costs so incurred out of any  
5 available appropriation. Any amounts so paid shall be deemed expense of  
6 administration and shall be repaid for the credit of the Department~~[Office]~~ of  
7 Insurance out of the first available moneys of the insurer.
- 8 (5) Hold hearings, subpoena witnesses and compel their attendance, administer oaths,  
9 examine any person under oath, and compel any person to subscribe to his or her  
10 testimony after it has been correctly reduced to writing, and in connection therewith  
11 require the production of any books, papers, record, or other documents which he or  
12 she deems relevant to the inquiry.
- 13 (6) Collect all debts and moneys due and claims belonging to the insurer, wherever  
14 located, and for this purpose institute timely action in other jurisdictions to marshal  
15 the assets of the insurer; forestall garnishment and attachment proceedings against  
16 such debts; do such other acts as are necessary or expedient to collect, conserve or  
17 protect its assets or property, including sell, compound, compromise or assign for  
18 purposes of collection, subject to court approval and upon such terms and  
19 conditions as the liquidator~~[he]~~ deems best, any disputed claims; and pursue any  
20 creditor's remedies available to enforce his or her claims. In lieu of collecting funds  
21 representing unearned premium of a policyholder which are in the possession of the  
22 insurer's agent with respect to the kinds of direct insurance protected under KRS  
23 304.36-030, the liquidator may authorize the use of such funds to replace the  
24 insurance coverage terminated pursuant to KRS 304.33-210, upon receipt from the  
25 agent of appropriate notice of such replacement of the insurance coverage with an  
26 insurer within sixty (60) days after the date of the liquidation order.
- 27 (7) Audit the books and records of all agents of the insurer insofar as these records



- 1 relate to the business activities of the insurer.
- 2 (8) Conduct public and private sales of the property of the insurer in a manner  
3 prescribed by the court.
- 4 (9) Use assets of the estate to transfer policy obligations to a solvent assuming insurer,  
5 if the transfer can be arranged without prejudice to applicable priorities under KRS  
6 304.33-430.
- 7 (10) Acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or  
8 otherwise dispose of or deal with any property of the insurer at its market value or  
9 upon such terms and conditions as are fair and reasonable, except that no  
10 transaction involving property the market value of which exceeds ten thousand  
11 dollars (\$10,000) shall be concluded without express permission of the court. The  
12 liquidator~~[He]~~ also may execute, acknowledge, and deliver any deeds, assignments,  
13 releases, and other instruments necessary or proper to effectuate any sale of property  
14 or other transaction in connection with the liquidation. In cases where real property  
15 sold by the liquidator is located other than in the county where the liquidation is  
16 pending, the liquidator shall cause to be filed with the county clerk for the county in  
17 which the property is located a certified copy of the order appointing him or her.
- 18 (11) Borrow money, subject to court approval, on the security of the insurer's assets or  
19 without security and execute and deliver all documents necessary to that transaction  
20 for the purpose of facilitating the liquidation.
- 21 (12) Enter into such contracts as are necessary to carry out the order to liquidate, and  
22 affirm or disavow any contracts to which the insurer is a party.
- 23 (13) Continue to prosecute and institute in the name of the insurer or in his or her own  
24 name any suits and other legal proceedings, in this state or elsewhere, and abandon  
25 the prosecution of claims he or she deems unprofitable to pursue further. If the  
26 insurer is dissolved under KRS 304.33-220, he or she may apply to any court in this  
27 state or elsewhere for leave to substitute himself or herself for the insurer as

1 plaintiff.

2 (14) Prosecute any action which may exist in behalf of the creditors, members,  
3 policyholders, or shareholders of the insurer against any officer of the insurer, or  
4 any other person.

5 (15) Remove any records and property of the insurer to the offices of the  
6 commissioner~~[executive director]~~ or to such other place as is convenient for the  
7 purposes of efficient and orderly execution of the liquidation.

8 (16) Deposit in one (1) or more banks in this state such sums as are required for meeting  
9 current administration expenses and dividend distributions.

10 (17) File any necessary documents for record in the office of any county clerk or record  
11 office in this state or elsewhere where property of the insurer is located.

12 (18) Assert all defenses available to the insurer as against third persons, including  
13 statutes of limitations, statutes of frauds, and the defense of usury. A waiver of any  
14 defense by the insurer after a petition for liquidation has been filed shall not bind  
15 the liquidator.

16 (19) Exercise and enforce all the rights, remedies and powers of any creditor,  
17 shareholder, policyholder, or member, including any power to avoid any transfer or  
18 lien that may be given by law and that is not included within KRS 304.33-290 to  
19 304.33-310, inclusive.

20 (20) Intervene in any proceeding wherever instituted that might lead to the appointment  
21 of a receiver or trustee, and act as the receiver or trustee whenever the appointment  
22 is offered.

23 (21) Enter into agreements with any receiver or commissioner of any other state relating  
24 to the rehabilitation, liquidation, conservation, or dissolution of an insurer doing  
25 business in both states.

26 (22) Exercise all powers now held or hereafter conferred upon receivers by the laws of  
27 this state not inconsistent with this subtitle.

(23) The enumeration in this section of the powers and authority of the liquidator is not a limitation upon him or her, nor does it exclude his or her right to do such other acts not herein specifically enumerated or otherwise provided for as are necessary or expedient for the accomplishment of or in aid of the purpose of liquidation.

→ Section 1447. KRS 304.33-250 is amended to read as follows:

(1) (a) Notice required; General requirements. The liquidator shall give notice of the liquidation order as soon as possible by first-class mail and either by telegram or telephone to the insurance commissioner of each jurisdiction in which the insurer is licensed to do business, by first-class mail and by telephone to the commissioner~~executive director~~ of the Department~~Office~~ of Workers' Claims of this state if the insurer is or has been an insurer of workers' compensation, by first-class mail to all insurance agents having a duty under KRS 304.33-260, and by first-class mail at the last known address to all persons known or reasonably expected to have claims against the insurer, including all policyholders. He or she also shall publish a notice, under KRS Chapter 424, in a newspaper of general circulation in the county in which the liquidation is pending and in Franklin County, the last publication to be not less than three (3) months before the earliest deadline specified in the notice under subsection (2) of this section;

(b) Special requirements. Notice to agents shall inform them of their duties under KRS 304.33-260 and inform them what information they must communicate to insureds. Notice to policyholders shall include notice of impairment and termination of coverage under KRS 304.33-210. When it is applicable, notice to policyholders shall include:

1. Notice of withdrawal of the insurer from the defense of any case in which the insured is interested; and
2. Notice of the right to file a claim under subsection (2) of KRS 304.33-

1                   390;

2           (c) Notice under subsection (1)(a) of this section to agents of the insurer and to  
3           potential claimants who are policyholders or insureds shall include, where  
4           applicable, notice that guaranty association or foreign guaranty association  
5           coverage may be available for all or part of certain claims, and that  
6           policyholders or certificate holders may be entitled to continuation of  
7           coverage through the guaranty association. The notice shall also include as an  
8           insert a separate notice from any guaranty association or foreign guaranty  
9           association obligated to provide coverage, if the notice is made available to  
10          the liquidator on a timely basis;

11          (d) Reports and further notice. Within fifteen (15) days of the date of entry of the  
12          order, the liquidator shall report to the court what notice has been given. The  
13          court may order such additional notice as it deems appropriate.

14       (2) Notice respecting claims filing. Except as otherwise established by the liquidator  
15       with approval of the court, notice to potential claimants under subsection (1) of this  
16       section shall require claimants to file with the liquidator their claims together with  
17       proper proofs thereof under KRS 304.33-370, on or before a date the liquidator  
18       specifies in the notice, which shall be not less than six (6) months nor more than a  
19       reasonable time specified in the court's order, except that the liquidator need not  
20       require persons claiming unearned premium and persons claiming cash surrender  
21       values or other investment values in life insurance and annuities to file a claim. The  
22       liquidator may specify different dates for the filing of different kinds of claims.

23       (3) Notice conclusive. If notice is given in accordance with this section, all persons to  
24       whom this notice is directed shall be bound by the terms and provisions of the  
25       liquidation order and all further orders and notices similarly served on them, and the  
26       distribution of the assets of the insurer under this subtitle shall be conclusive with  
27       respect to all claimants, whether or not they received notice.

➔Section 1448. KRS 304.33-270 is amended to read as follows:

- (1) Termination of actions against insurer by order appointing liquidator. Upon issuance of any order appointing the commissioner~~executive director~~ liquidator of a domestic insurer or of an alien insurer domiciled in this state, no actions may be instituted against the insurer or the liquidator without approval of the court and all actions and all proceedings against the insurer whether in this state or elsewhere shall be abated and the liquidator shall not intervene in them, except as provided in this subsection. Whenever in the liquidator's judgment an action in this state has proceeded to a point where fairness or convenience would be served by its continuation to judgment, he or she may apply to the court for leave to defend or to be substituted for the insurer, and if the court gives him or her leave, the action shall not be abated. Whenever in the liquidator's judgment, protection of the estate of the insurer necessitates intervention in an action against the insurer that is pending outside this state, with approval of the court the liquidator~~he~~ may intervene in the action. The liquidator may defend any action in which he or she intervenes under this section at the expense of the estate of the insurer.
- (2) Statute of limitations on claims by insurer. The liquidator may, within two (2) years subsequent to the entry of an order for liquidation or within such further time as applicable law permits, institute an action or proceeding on behalf of the estate of the insurer upon any cause of action against which the period of limitation fixed by applicable law has not expired at the time of the filing of the petition upon which such order is entered. Where, by any agreement, a period of limitation is fixed for instituting a suit or proceeding upon any claim or for filing any claim, proof of claim, proof of loss, demand, notice or the like, or where in any proceeding, judicial or otherwise, a period of limitation is fixed, either in the proceeding or by applicable law, for taking any action, filing any claim or pleading or doing any act, and where in any such case the period had not expired at the date of the filing of the

petition, the liquidator may, for the benefit of the estate, take any such action or do any such act, required of or permitted to the insurer, within a period of sixty (60) days subsequent to the entry of an order for liquidation, or within such further period as is permitted by the agreement, or in the proceeding or by applicable law, or within such further period as is shown to the satisfaction of the court not to be unfairly prejudicial to the other party.

- (3) Statutes of limitations on claims against insurer. The time between the filing of a petition for liquidation against an insurer and the denial of the petition shall not be considered to be a part of the time within which any action may be commenced against the insurer. Any action against the insurer that might have been commenced when the petition was filed may be commenced for at least sixty (60) days after the petition is denied.

➔Section 1449. KRS 304.33-300 is amended to read as follows:

- (1) Effect of petition: real property. After a petition for rehabilitation or liquidation, a transfer of any of the real property of the insurer made to a person acting in good faith shall be valid against the receiver if made for a present fair equivalent value or, if not made for a present fair equivalent value, then to the extent of the present consideration actually paid therefor, for which amount the transferee shall have a lien on the property so transferred. The recording of a copy of the petition for or order of rehabilitation or liquidation with the county clerk in the county where any real property in question is located shall be constructive notice of the commencement of a proceeding in rehabilitation or liquidation. The exercise by a court of the United States or any state of jurisdiction to authorize or effect a judicial sale of real property of the insurer within any county in any state shall not be impaired by the pendency of such a proceeding unless the copy is recorded in the county prior to the consummation of the judicial sale.

- (2) Effect of petition: personal property. After a petition for rehabilitation or liquidation

1 and before either the receiver takes possession of the property of the insurer or an  
2 order of rehabilitation or liquidation is granted:

3 (a) A transfer of any of the property of the insurer, other than real property, made  
4 to a person acting in good faith shall be valid against the receiver if made for a  
5 present fair equivalent value or, if not made for a present fair equivalent value,  
6 then to the extent of the present consideration actually paid therefor, for which  
7 amount the transferee shall have a lien on the property so transferred.

8 (b) A person indebted to the insurer or holding property of the insurer may, if  
9 acting in good faith, pay the indebtedness or deliver the property or any part  
10 thereof to the insurer or upon his or her order, with the same effect as if the  
11 petition were not pending.

12 (c) A person having actual knowledge of the pending rehabilitation or liquidation  
13 shall be deemed not to act in good faith unless he or she has reasonable cause  
14 to believe that the petition is not well founded.

15 (d) A person asserting the validity of a transfer under this section shall have the  
16 burden of proof. Except as elsewhere provided in this section, no transfer by  
17 or in behalf of the insurer after the date of the petition for liquidation by any  
18 person other than the liquidator shall be valid against the liquidator.

19 (3) Every person receiving any property from the insurer or any benefit thereof which is  
20 a fraudulent transfer under this section shall be personally liable therefor and shall  
21 be bound to account to the liquidator.

22 (4) Negotiability. Nothing in this subtitle shall impair the negotiability of currency or  
23 negotiable instruments.

24 ➔Section 1450. KRS 304.33-460 is amended to read as follows:

25 (1) Unclaimed funds. All unclaimed funds subject to distribution remaining in the  
26 liquidator's hands when the liquidator~~he~~ is ready to apply to the court for  
27 discharge, including the amount distributable to any creditor, shareholder, member

or other person who is unknown or cannot be found or who is under disability with no person legally competent to receive his or her distributive share, shall be deposited with the State Treasurer, and shall be paid over without interest except in accordance with KRS 304.33-430 to the person entitled thereto or his or her legal representative upon proof satisfactory to the State Treasurer of his or her right thereto. Any amount on deposit not claimed within six (6) years from the discharge of the liquidator is deemed abandoned and shall become property of the state. The State Treasurer shall at the end of each fiscal year transfer these amounts to the common school fund.

- (2) Withheld funds. All funds withheld under KRS 304.33-390 and not distributed shall upon discharge of the liquidator be deposited with the State Treasurer and paid by him or her in accordance with KRS 304.33-390. Any sums remaining which under KRS 304.33-390 would revert to the undistributed assets of the insurer shall be transferred to the State Treasurer and become the property of the state under subsection (1) of this section unless the commissioner~~[executive director]~~ petitions the court to reopen the liquidation under KRS 304.33-480.

➔Section 1451. KRS 304.33-480 is amended to read as follows:

After the liquidation proceeding has been terminated and the liquidator discharged, the commissioner~~[executive director]~~ or other interested party may at any time petition the court to reopen the proceedings for good cause, including the discovery of additional assets. If the court is satisfied that there is justification for reopening, it shall so order.

➔Section 1452. KRS 304.33-490 is amended to read as follows:

Whenever it appears to the commissioner~~[executive director]~~ that the records of any insurer in process of liquidation or completely liquidated are no longer useful, the commissioner~~[he]~~ may recommend to the court what records should be retained for future reference and what should be disposed of. The court shall enter an order thereon. The commissioner~~[executive director]~~ shall keep all records the court orders preserved,



1 in accordance with KRS 304.2-150.

2 ➔Section 1453. KRS 304.33-500 is amended to read as follows:

3 The court in which the proceeding is pending may as it deems desirable, cause audits to  
4 be made of the books of the commissioner~~[executive-director]~~ relating to any  
5 receivership established under this subtitle, and a report of each audit shall be filed with  
6 the commissioner~~[executive-director]~~ and with the court. The books, records and other  
7 documents of the receivership shall be made available to the auditor at any time without  
8 notice. The expense of each audit shall be considered a cost of administration of the  
9 receivership.

10 ➔Section 1454. KRS 304.33-510 is amended to read as follows:

11 (1) Grounds for petition. If a domiciliary liquidator has not been appointed, the  
12 commissioner~~[executive-director]~~ may apply to the Franklin Circuit Court by  
13 petition for an order directing him or her to conserve the property of an alien  
14 insurer not domiciled in this state or a foreign insurer on any one (1) or more of the  
15 following grounds:

- 16 (a) Any of the grounds in KRS 304.33-140;
- 17 (b) Any of the grounds in KRS 304.33-190;
- 18 (c) That any of its property has been sequestered by official action in its  
19 domiciliary state, or in any other state;
- 20 (d) That enough of its property has been sequestered in a foreign country to give  
21 reasonable cause to fear that the insurer is or may become insolvent;
- 22 (e) That
  - 23 1. Its certificate of authority to do business in this state has been revoked or  
24 that none was ever issued, and
  - 25 2. There are residents of this state with outstanding claims or outstanding  
26 policies.

27 (2) Terms of order. The court may issue the order in whatever terms it deems

appropriate. The filing or recording of the order with any county clerk in this state imparts the same notice as a deed, bill of sale or other evidence of title duly filed or recorded with that county clerk.

(3) Transformation to liquidation or ancillary receivership. The conservator may at any time petition for and the court may grant an order under KRS 304.33-520 to liquidate the assets of a foreign or alien insurer under conservation or, if appropriate, for an order under KRS 304.33-540 to be appointed ancillary receiver.

(4) Order to return to insurer. The conservator may at any time petition the court for an order terminating conservation of an insurer. If the court finds that the conservation is no longer necessary, it shall order that the insurer be restored to possession of its property and the control of its business. The court may also make such finding and issue such order at any time upon its own motion.

➔Section 1455. KRS 304.33-520 is amended to read as follows:

(1) Ground for petition. If no domiciliary receiver has been appointed, the commissioner~~[executive director]~~ may apply to the Franklin Circuit Court by petition for an order directing the commissioner~~[him]~~ to liquidate the assets found in this state of a foreign insurer or an alien insurer not domiciled in this state, on any of the following grounds:

- (a) Any of the grounds in KRS 304.33-140;
- (b) Any of the grounds in KRS 304.33-190;
- (c) Any of the grounds in KRS 304.33-510.

(2) Terms of order. If it appears to the court that the best interests of creditors, policyholders and the public so require, the court may issue an order to liquidate in whatever terms it deems appropriate. The filing or recording of the order with any county clerk in this state imparts the same notice as a deed, bill of sale or other evidence of title duly filed or recorded with that county clerk.

(3) Conversion to ancillary proceeding. If a domiciliary liquidator is appointed in a

reciprocal state while a liquidation is proceeding under this section, the liquidator under this section shall thereafter act as ancillary receiver under KRS 304.33-540. If a domiciliary liquidator is appointed in a nonreciprocal state while a liquidation is proceeding under this section, the liquidator under this section may petition the court for permission to act as ancillary receiver under KRS 304.33-540.

- (4) Federal receivership. On the same grounds as are specified in subsection (1) of this section, the commissioner~~[executive director]~~ may petition any appropriate federal District Court to be appointed receiver to liquidate that portion of the insurer's assets and business over which the court will exercise jurisdiction; or any lesser part thereof that the commissioner~~[executive director]~~ deems desirable for the protection of the policyholders and creditors in this state. The commissioner~~[executive director]~~ may accept appointment as federal receiver if another person files a petition.

➔Section 1456. KRS 304.33-530 is amended to read as follows:

- (1) Property rights and title: reciprocal state. The domiciliary liquidator of an insurer domiciled in a reciprocal state shall be vested by operation of law with the title to all of the property, contracts and rights of action, and all of the books, accounts and other records of the insurer located in this state. The date of vesting shall be the date of the filing of the petition, if that date is specified by the domiciliary law for the vesting of property in the domiciliary state; otherwise, the date of vesting shall be the date of entry of the order directing possession to be taken. The domiciliary liquidator shall have the immediate right to recover balances due from agents and to obtain possession of the books, accounts and other records of the insurer located in this state. The domiciliary liquidator~~[He]~~ also shall have the right to recover the other assets of the insurer located in this state, subject to subsection (3) of KRS 304.33-540.

- (2) Property rights and title: state not a reciprocal state. If a domiciliary liquidator is

1 appointed for an insurer not domiciled in a reciprocal state, the  
 2 commissioner~~[executive director]~~ of this state shall be vested by operation of law  
 3 with the title to all of the property, contracts and rights of action, and all of the  
 4 books, accounts and other records of the insurer located in this state, at the same  
 5 time that the domiciliary liquidator is vested with title in the domiciling state. The  
 6 commissioner~~[executive director]~~ of this state may petition for a conservation or  
 7 liquidation order under KRS 304.33-510 or 304.33-520, or for an ancillary  
 8 receivership under KRS 304.33-540, or after approval by the Franklin County  
 9 Circuit Court, may transfer title to the domiciliary liquidator, as the interests of  
 10 justice and the equitable distribution of the assets require.

- 11 (3) Filing claims. Claimants residing in this state may file claims with the liquidator or  
 12 ancillary receiver, if any, in this state or with the domiciliary liquidator, if the  
 13 domiciliary law permits. The claims must be filed on or before the last date fixed  
 14 for the filing of claims in the domiciliary liquidation proceedings.

15 ➔Section 1457. KRS 304.33-540 is amended to read as follows:

- 16 (1) Appointment of ancillary receiver in this state. If a domiciliary liquidator has been  
 17 appointed for an insurer not domiciled in this state, the commissioner~~[executive~~  
 18 ~~director]~~ shall file a petition with the Franklin Circuit Court requesting appointment  
 19 as ancillary receiver in this state:

- 20 (a) If the commissioner~~[he]~~ finds that there are sufficient assets of the insurer  
 21 located in this state to justify the appointment of an ancillary receiver;  
 22 (b) If ten (10) or more persons resident in this state having claims against the  
 23 insurer file a petition with the commissioner~~[executive director]~~ requesting  
 24 appointment of an ancillary receiver; or  
 25 (c) If the protection of creditors or policyholders in this state so requires.

- 26 (2) Terms of order. The court may issue an order appointing an ancillary receiver in  
 27 whatever terms it deems appropriate. The filing or recording of the order with any

1 county clerk in this state imparts the same notice as a deed, bill of sale or other  
2 evidence of title duly filed or recorded with that county clerk.

3 (3) Property rights and title: ancillary receivers in this state. When a domiciliary  
4 liquidator has been appointed in a reciprocal state the ancillary receiver appointed in  
5 this state under subsection (1) of this section shall have the sole right to recover all  
6 the assets of the insurer in this state not already recovered by the domiciliary  
7 liquidator, except that the domiciliary liquidator shall be entitled to and have the  
8 sole right to recover balances due from agents and the books, accounts and other  
9 records of the insurer. The ancillary receiver shall have the right to recover balances  
10 due from agents and books, accounts and other records of the insurer, if such action  
11 is necessary to protect the assets because of inaction by the domiciliary liquidator.  
12 The ancillary receiver shall, as soon as practicable, liquidate from their respective  
13 securities those special deposit claims and secured claims which are proved and  
14 allowed in the ancillary proceedings in this state, and shall pay the necessary  
15 expenses of the proceedings. The ancillary receiver~~[He]~~ shall promptly transfer all  
16 remaining assets to the domiciliary liquidator. Subject to this section, the ancillary  
17 receiver and his or her deputies shall have the same powers and be subject to the  
18 same duties with respect to the administration of assets as a liquidator of an insurer  
19 domiciled in this state.

20 (4) Property rights and title: foreign ancillary receivers. When a domiciliary liquidator  
21 has been appointed in this state, ancillary receivers appointed in reciprocal states  
22 shall have, as to assets and books, accounts and other records located in their  
23 respective states, corresponding rights and powers to those prescribed in subsection  
24 (3) of this section for ancillary receivers appointed in this state.

25 ➔Section 1458. KRS 304.33-550 is amended to read as follows:

26 The commissioner~~[executive director]~~ in his or her sole discretion may institute  
27 proceedings under KRS 304.33-110 or 304.33-120 at the request of the commissioner or

1 other appropriate official of the domiciliary state of any foreign or alien insurer having  
2 property located in this state.

3 ➔Section 1459. KRS 304.35-010 is amended to read as follows:

4 (1) As used in this subtitle:

5 (a) "Casualty insurance" has the meaning set forth in KRS 304.5-070; and

6 (b) "Property insurance" has the meaning set forth in KRS 304.5-050.

7 (2) All insurers licensed to write property or casualty insurance in this Commonwealth  
8 on a direct basis shall, subject to approval and regulation by the  
9 commissioner~~[executive director]~~ of insurance, establish and maintain a "FAIR"  
10 (fair access to insurance requirements) plan and establish and maintain a  
11 reinsurance association and formulate and from time to time amend the plan and  
12 articles of association and rules and regulations in connection therewith, and assess  
13 and share on a fair and equitable basis all expenses, income, and losses incident to  
14 such "FAIR" plan and reinsurance association in a manner consistent with the  
15 provisions of this subtitle.

16 ➔Section 1460. KRS 304.35-030 is amended to read as follows:

17 (1) The "FAIR" plan and articles of association shall make provision for a reinsurance  
18 association having authority on behalf of its members as their agent to cause to be  
19 issued property and casualty insurance policies, to reinsure in whole or in part any  
20 such policies, and to cede any such reinsurance. The plan and articles of association  
21 shall provide, among other things, for the lines of business to be written, policy  
22 forms to be used, perils to be covered, geographical area of coverage, compensation  
23 and commissions, assessments of members (which assessments annually shall not  
24 exceed one percent (1%) of any such member's net direct premium written on a  
25 voluntary basis in this state during the preceding year), participation in the writings,  
26 expenses, income, and losses in the proportion each member's property and casualty  
27 premiums written bear to the aggregate property and casualty premiums voluntarily

1 written by all members, the administration of the plan and association, and any  
 2 other matter necessary or convenient for the purpose of assuring fair access to  
 3 insurance requirements.

4 (2) If the commissioner~~[executive director]~~, in the fulfillment of the duties imposed on  
 5 him or her by KRS 304.13-041, determines that a reasonable degree of competition  
 6 does not exist in the market for any lines of insurance, within the definitions of  
 7 KRS 304.5-050 (property insurance) and KRS 304.5-070 (casualty insurance), or  
 8 either of them, and issues an order to that effect, the commissioner~~[executive~~  
 9 ~~director]~~ shall order the governing committee to promptly amend the plan to include  
 10 such line or lines of business unless, in the commissioner's~~[executive director's]~~  
 11 opinion, an effective residual market mechanism as defined in KRS 304.13-011(8)  
 12 is already then functioning to provide basic insurance requirements to worthy  
 13 applicants for reasonable amounts of coverage under such line or lines of insurance  
 14 with insurers licensed to do business in this state. For accounting and rate-making  
 15 purposes, the commissioner~~[executive director]~~ may require the plan to provide for  
 16 the establishment and maintenance of separate accounts for any line included in the  
 17 plan pursuant to this section.

18 ➔Section 1461. KRS 304.35-040 is amended to read as follows:

19 (1) The Reinsurance Association shall be governed by a committee consisting of seven  
 20 (7) persons to be appointed by the commissioner~~[executive director]~~ of insurance.  
 21 The commissioner~~[executive director]~~ shall appoint two (2) persons representing  
 22 insurers chartered under the laws of the Commonwealth of Kentucky, one (1)  
 23 person representing an insurer that is neither chartered under the laws of the  
 24 Commonwealth of Kentucky nor affiliated with one (1) of the national insurance  
 25 trade associations, one (1) person representing an insurer from each of the following  
 26 three (3) associations: American Insurance Association, National Association of  
 27 Mutual Insurance Companies, the Property Casualty Insurers Association of

1 America, and one (1) licensed insurance agent.

- 2 (2) The "FAIR" plan shall maintain a formulated plan and articles consistent with this  
 3 subtitle. The governing committee of the association may, on its own initiative or  
 4 shall at the request of the commissioner~~[executive director]~~, amend the plan and  
 5 articles, subject to approval by the commissioner~~[executive director]~~.
- 6 (3) The governing committee of the association shall, on or before April 1 of each year,  
 7 file with the commissioner~~[executive director]~~, on such forms as the  
 8 commissioner~~[executive director]~~ requires, an accounting of the plan's operations  
 9 during the preceding calendar year together with its financial condition, and its  
 10 underwriting experience as to each separate account maintained therein, as of the  
 11 end of such year. The commissioner~~[executive director]~~ may require interim  
 12 accountings on a quarterly basis or examine the affairs of the association when, in  
 13 his or her opinion, such action is necessary to determine the continued solvency of  
 14 the Reinsurance Association.
- 15 (4) If at any time the commissioner~~[executive director]~~ determines that the Reinsurance  
 16 Association is or may become unable to meet its financial obligations during the  
 17 current year, the commissioner~~[executive director]~~ shall order the governing  
 18 committee to levy appropriate assessments within the limitations of KRS 304.35-  
 19 030(1) against all members.

20 ➔Section 1462. KRS 304.35-050 is amended to read as follows:

21 Any person aggrieved by any action or decision of the governing committee may appeal  
 22 to the commissioner~~[executive director]~~ of insurance within thirty (30) days from the date  
 23 of the action or the decision. The commissioner~~[executive director]~~ shall, after a hearing  
 24 conducted in accordance with KRS Chapter 13B, issue a final order approving the action  
 25 or decision or disapproving the action or decision with respect to the matter which is the  
 26 subject of appeal.

27 ➔Section 1463. KRS 304.35-105 is amended to read as follows:



1 The commissioner~~[executive director]~~ shall request, receive and transmit the names and  
 2 addresses of all commercial real property policy applicants to the "FAIR" plan to the state  
 3 fire marshal.

4 ➔Section 1464. KRS 304.36-050 is amended to read as follows:

5 As used in this subtitle, unless the context otherwise requires:

6 (1) "Affiliate" means a person who directly or indirectly, through one (1) or more  
 7 intermediaries, controls, is controlled by, or is under common control with an  
 8 insolvent insurer on December 31 of the year immediately preceding the date that  
 9 the insurer becomes an insolvent insurer.

10 (2) "Association" means the Kentucky Insurance Guaranty Association created under  
 11 KRS 304.36-060.

12 (3) "Claimant" means any insured making a first-party claim or any person instituting a  
 13 liability claim, provided that no person who is an affiliate of the insolvent insurer  
 14 may be a claimant.

15 (4) "Commissioner~~[Executive director]~~" means the commissioner~~[executive director]~~  
 16 of the Department of Insurance of Kentucky.

17 (5) "Control" means the possession, direct or indirect, of power to direct or cause the  
 18 direction of the management and policies of a person, whether through the  
 19 ownership of voting securities, by contract other than a loan contract or a  
 20 commercial contract for goods or nonmanagement services, or otherwise, unless the  
 21 power is the result of an official position with or corporate office held by the  
 22 person. Control shall be presumed to exist if any person, directly or indirectly,  
 23 owns, controls, holds with the power to vote, or holds proxies representing ten  
 24 percent (10%) or more of any other person. This presumption may be rebutted by a  
 25 showing that control does not exist in fact.

26 (6) (a) "Covered claim" means an unpaid claim, including one for unearned  
 27 premiums, submitted by a claimant, which arises out of and is within the

1 coverage and is subject to the applicable limits of an insurance policy to which  
 2 this subtitle applies issued by an insurer, if the insurer becomes an insolvent  
 3 insurer after June 16, 1972, and:

- 4 1. The claimant or insured is a resident of this state at the time of the  
 5 insured event, provided that for entities other than an individual, the  
 6 residence of a claimant, insured, or policyholder is the state in which its  
 7 principal place of business is located at the time of the insured event; or
- 8 2. The claim is a first-party claim for damage to property with a permanent  
 9 location in this state.

10 (b) "Covered claim" shall not include the following:

- 11 1. Any amount due any reinsurer, insurer, insurance pool, or underwriting  
 12 association, as subrogation recoveries or otherwise;
- 13 2. Any amount sought as a return of premium under any retrospective  
 14 rating plan or dividends plan;
- 15 3. Legal expenses for policyholders who were not Kentucky residents on  
 16 the date of the insured event;
- 17 4. Legal expenses for policyholders who were Kentucky residents at the  
 18 time of the insured event if the legal expenses exceed the association's  
 19 statutory cap;
- 20 5. Any first-party claim by an insured whose net worth exceeds twenty-five  
 21 million dollars (\$25,000,000) on December 31 of the year prior to the  
 22 year in which the insurer becomes an insolvent insurer, provided that an  
 23 insurer's net worth on that date shall be deemed to include the aggregate  
 24 net worth of the insured and all of its subsidiaries as calculated on a  
 25 consolidated basis;
- 26 6. Any first-party claim by an insured that is an affiliate of an insolvent  
 27 insurer; or

1           7. Any amount awarded as punitive or exemplary damages.

2       (7) "Insolvent insurer" means:

3           (a) An insurer licensed to transact insurance in this state either at the time the  
4           policy was issued or when the insured event occurred;

5           (b) Against whom a final order of liquidation, with a finding of insolvency, has  
6           been entered by a court of competent jurisdiction in the company's state of  
7           domicile after June 16, 1972; and

8           (c) With respect to which no order, decree, or finding relating to the solvency of  
9           the insurer, whether preliminary or temporary in nature or otherwise has been  
10          issued by a court of competent jurisdiction or by any insurance ~~executive~~  
11          ~~director or~~ commissioner, insurance office or department or similar official or  
12          body before June 16, 1972, or which was in fact insolvent before June 16,  
13          1972, and the de facto insolvency was known by the chief insurance  
14          regulatory official of the state of its domicile.

15       (8) "Member insurer" means:

16           (a) Any person who writes any kind of insurance to which this subtitle applies  
17           under KRS 304.36-030, including the exchange of reciprocal or inter-  
18           insurance contracts; and

19           (b) Any person who is licensed to transact insurance in this state. For purposes of  
20           determining a withdrawing member's assessment liability, an insurer shall  
21           cease to be a member insurer effective on the day following the termination or  
22           expiration of his or her license to transact the kinds of insurance to which this  
23           subtitle applies. However, the insurer shall remain liable as a member insurer  
24           for any and all obligations, including obligations for assessments levied prior  
25           to the termination or expiration of the insurer's license and assessments levied  
26           after the termination or expiration, that relate to any insurer that became an  
27           insolvent insurer prior to the termination or expiration of the insurer's license.

1 (9) "Net direct written premiums" means direct gross premiums written, or in the case  
 2 of an insurer organized under KRS Chapter 299, assessments, membership fees, and  
 3 policy fees levied and collected in this state, less returns thereon and dividends paid  
 4 or credited to policyholders on such direct business. "Net direct written premiums"  
 5 does not include premiums on contracts between insurers or reinsurers.

6 (10) "Ocean marine insurance" includes any form of insurance, regardless of name, label,  
 7 or marketing designation of the insurance policy, that insures against maritime  
 8 perils or risks and other related perils or risks, that are usually insured against by  
 9 traditional marine insurance such as hull and machinery, marine builders risk, and  
 10 marine protection and indemnity. These perils and risks insured against include  
 11 without limitation loss, damage, or expense or legal liability of the insured for loss,  
 12 damage, or expense arising out of or incident to ownership, operation, chartering,  
 13 maintenance, use, repair, or construction of any vessel, craft, or instrumentality in  
 14 use in ocean or inland waterways, including liability of the insured for personal  
 15 injury, illness, or death or for loss or damage to the property of the insured or  
 16 another person. "Ocean marine insurance" includes that coverage written in  
 17 accordance with the following:

- 18 (a) The Jones Act (46 U.S.C. sec. 688);
- 19 (b) The Longshore and Harbor Workers' Compensation Act D (33 U.S.C. secs.  
 20 901 et seq.); or
- 21 (c) Any other similar federal statutory enactment, or any endorsement or policy  
 22 affording protection and indemnity coverage.

23 (11) "Insured event," in an occurrence policy and claims-made policy, means the act that  
 24 gave rise to the claim.

25 ➔Section 1465. KRS 304.36-070 is amended to read as follows:

- 26 (1) The board of directors of the association shall consist of not less than five (5) nor  
 27 more than nine (9) persons serving terms as established in the plan of operation.

1 The members of the board shall be selected by member insurers subject to the  
 2 approval of the commissioner~~[executive director]~~. Vacancies on the board shall be  
 3 filled for the remaining period of the term by a majority vote of the remaining board  
 4 members, subject to the approval of the commissioner~~[executive director]~~. If no  
 5 members are selected within sixty (60) days after June 16, 1972, the  
 6 commissioner~~[executive director]~~ may appoint the initial members of the board of  
 7 directors.

8 (2) In approving selections to the board, the commissioner~~[executive director]~~ shall  
 9 consider among other things whether all member insurers are fairly represented.

10 (3) Members of the board may be reimbursed from the assets of the association for  
 11 expenses incurred by them as members of the board of directors.

12 ➔Section 1466. KRS 304.36-080 is amended to read as follows:

13 (1) The association shall:

14 (a) Be obligated to the extent of the covered claims existing prior to the order of  
 15 liquidation and arising within thirty (30) days after the order of liquidation, or  
 16 before the policy expiration date if less than thirty (30) days after the order of  
 17 liquidation, or before the insured replaces the policy or on request effects  
 18 cancellation, if the insured~~[he]~~ does so within thirty (30) days of the order of  
 19 liquidation. The obligation shall be satisfied by paying to the claimant an  
 20 amount as follows:

- 21 1. The full amount of a covered claim for benefits arising from a workers'  
 22 compensation insurance policy purchased to satisfy the requirements of  
 23 KRS 342.340;
- 24 2. An amount not exceeding ten thousand dollars (\$10,000) per policy for a  
 25 covered claim for the return of unearned premium; or
- 26 3. An amount not exceeding three hundred thousand dollars (\$300,000) per  
 27 claimant for all other covered claims.

(b) Not be obligated to pay a claimant an amount in excess of the obligation of the insolvent insurer under the policy or coverage from which the claim arises. Notwithstanding any other provisions of this subtitle, a covered claim shall not include a claim filed with the association after the earlier of twelve (12) months after the date of the order of liquidation, or the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer and shall not include any claim filed with the association or a liquidator for protection afforded under the insured's policy for incurred but not reported losses. Any obligation of the association to defend an insured shall cease upon the association's payment or tender of an amount equal to the lesser of the association's covered claim obligation limit or the applicable policy limit. Notwithstanding any other provisions of this subtitle, except in the case of a claim for benefits under workers' compensation coverage, any obligation of the association to any and all persons shall cease when ten million dollars (\$10,000,000) shall have been paid in the aggregate by the association and any one (1) or more associations similar to the association of any other state or states or any property/casualty security fund that obtains contributions from insurers on a preinsolvency basis to or on behalf of any insured and its affiliates on covered claims or allowed claims arising under the policy or policies of any one (1) insolvent insurer. For purposes of this section, the term "affiliate" shall mean a person who directly or indirectly, through one (1) or more intermediaries, controls, is controlled by, or is under common control with another person. If the claimant has a covered claim or allowed claim against the association or any associations similar to the association or any property and casualty insurance security fund of another states, under the policy or policies of any one (1) insolvent insurer, the association may establish a plan to allocate amounts payable by the

1 association in a manner as the association in its discretion deems equitable;

2 (c) Be deemed the insurer to the extent of its obligation on the covered claims and  
3 to that extent shall have all rights, duties, and obligations of the insolvent  
4 insurer as if the insurer had not become insolvent, including, but not limited  
5 to, the right to pursue and retain salvage and subrogation recoverable on paid  
6 covered claim obligations;

7 (d) Assess insurers amounts necessary to pay the obligations of the association  
8 under paragraph (a) of this subsection subsequent to an insolvency, the  
9 expenses of handling covered claims subsequent to an insolvency, and the cost  
10 of examinations under KRS 304.36-130 and other expenses authorized by this  
11 subtitle. The assessments of each member insurer shall be in the proportion  
12 that the net direct written premiums of the member insurer for the calendar  
13 year preceding the assessment bears to the net direct written premiums of all  
14 member insurers for the calendar year preceding the assessment. Each  
15 member insurer shall be notified of the assessment not later than thirty (30)  
16 days before it is due. No member insurer may be assessed in any year an  
17 amount greater than two percent (2%) of that member insurer's net direct  
18 written premiums for the calendar year preceding the assessment. If the  
19 maximum assessment, together with the other assets of the association, does  
20 not provide in any one (1) year an amount sufficient to make all necessary  
21 payments, the funds available shall be prorated and the unpaid portion shall be  
22 paid as soon thereafter as funds become available. The association shall pay  
23 claims in any order which it may deem reasonable including the payment of  
24 claims as such are received from the claimants or in groups or categories of  
25 claims. The association may exempt or defer, in whole or in part, the  
26 assessment of any member insurer, if the assessment would cause the member  
27 insurer's financial statement to reflect amounts of capital or surplus less than

the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance; provided, however, that during the period of deferment, no dividends shall be paid to shareholders or policyholders. Deferred assessments shall be paid when such payment will not reduce capital and surplus below required minimums. Such payments shall be refunded to those companies receiving larger assessments by virtue of such deferment, or at the election of any such company, credited against future assessments. Each member insurer serving as a servicing facility may set off against any assessment authorized payments made on covered claims and expenses incurred in the payment of such claims by such member insurer;

(e) Investigate claims brought against the association and adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims;

(f) Notify such persons as the commissioner~~executive director~~ directs under KRS 304.36-100(2)(a);

(g) Handle claims through its employees or through one (1) or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner~~executive director~~, but such designation may be declined by a member insurer; and

(h) Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and shall pay the other expenses of the association authorized by this subtitle.

(2) The association may:

(a) Appear in, defend, and appeal any action on a claim brought against the association;



- 1 (b) Employ or retain such persons as are necessary to handle claims and perform
- 2 other duties of the association;
- 3 (c) Borrow funds necessary to effect the purposes of this subtitle in accord with
- 4 the plan of operation;
- 5 (d) Sue or be sued;
- 6 (e) Negotiate and become a party to such contracts as are necessary to carry out
- 7 the purpose of this subtitle;
- 8 (f) Perform such other acts as are necessary or proper to effectuate the purpose of
- 9 this subtitle; and
- 10 (g) Refund to the member insurers in proportion to the contribution of each
- 11 member insurer to the association that amount by which the assets of the
- 12 association exceed the liabilities, if, at the end of any calendar year, the board
- 13 of directors finds that the assets of the association exceed the liabilities of the
- 14 association as estimated by the board of directors for the coming year.

15 →Section 1467. KRS 304.36-090 is amended to read as follows:

- 16 (1) (a) The association shall submit to the commissioner~~[executive-director]~~ a plan
- 17 of operation and any amendments thereto necessary or suitable to assure the
- 18 fair, reasonable, and equitable administration of the association. The plan of
- 19 operation and any amendments thereto shall become effective upon approval
- 20 in writing by the commissioner~~[executive-director]~~.
- 21 (b) If the association fails to submit a suitable plan of operation within ninety (90)
- 22 days following June 16, 1972, or if at any time thereafter the association fails
- 23 to submit suitable amendments to the plan, the commissioner~~[executive~~
- 24 ~~director]~~ shall, after notice and hearing, adopt and promulgate such reasonable
- 25 rules as are necessary or advisable to effectuate the provisions of this subtitle.
- 26 Such rules shall continue in force until modified by the
- 27 commissioner~~[executive-director]~~ or superseded by a plan submitted by the

1 association and approved by the commissioner~~[executive director]~~.

2 (2) All member insurers shall comply with the plan of operation.

3 (3) The plan of operation shall:

4 (a) Establish the procedures whereby all the powers and duties of the association  
5 under KRS 304.36-080 will be performed.

6 (b) Establish procedures for handling assets of the association.

7 (c) Establish the amount and method of reimbursing members of the board of  
8 directors under KRS 304.36-070.

9 (d) Establish procedures by which claims may be filed with the association and  
10 establish acceptable forms of proof of covered claims. Notice of claims to the  
11 receiver or liquidator of the insolvent insurer shall be deemed notice to the  
12 association or its agent, and a list of such claims shall be periodically  
13 submitted to the association or similar organization in another state by the  
14 receiver or liquidator.

15 (e) Establish regular places and times for meetings of the board of directors.

16 (f) Establish procedures for records to be kept of all financial transactions of the  
17 association, its agents, and the board of directors.

18 (g) Provide that any member insurer aggrieved by any final action or decision of  
19 the association may appeal to the commissioner~~[executive director]~~ within  
20 thirty (30) days after the action or decision.

21 (h) Establish the procedures whereby selections for the board of directors will be  
22 submitted to the commissioner~~[executive director]~~.

23 (i) Contain additional provisions necessary or proper for the execution of the  
24 powers and duties of the association.

25 (4) The plan of operation may provide that any or all powers and duties of the  
26 association, except those under KRS 304.36-080(1)(d) and (2)(c), are delegated to a  
27 corporation, association, or other organization which performs or will perform

functions similar to those of this association, or its equivalent, in two (2) or more states. Such a corporation, association, or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid for its performance of any other functions of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the commissioner~~executive director~~, and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this subtitle.

- (5) The plan of operation may establish procedures by which claims may be filed with the association and establish acceptable forms of proof of covered claims. Notice of claims to the receiver or liquidator of the insolvent insurer shall be deemed notice to the association or its agent, and a list of claims shall be periodically submitted to the association or similar organization in another state by the receiver or liquidator.

➔Section 1468. KRS 304.36-100 is amended to read as follows:

- (1) The commissioner~~executive director~~ shall:

- (a) Notify the association of the existence of an insolvent insurer not later than three (3) days after he or she receives notice of the determination of the insolvency.
- (b) Upon request of the board of directors, provide the association with a statement of the net direct written premiums of each member insurer.

- (2) The commissioner~~executive director~~ may:

- (a) Require that the association notify the insureds of the insolvent insurer and any other interested parties of the determination of insolvency and of their rights under this subtitle. Such notification shall be by mail at their last known address, where available, but if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation shall be sufficient.

(b) Suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner~~[executive director]~~ may levy a fine on any member insurer which fails to pay an assessment when due. Such fine shall not exceed five percent (5%) of the unpaid assessment per month, except that no fine shall be less than one hundred dollars (\$100) per month.

(c) Revoke the designation of any servicing facility if the commissioner~~he~~ finds claims are being handled unsatisfactorily.

➔ Section 1469. KRS 304.36-130 is amended to read as follows:

To aid in the detection and prevention of insurer insolvencies:

(1) It shall be the duty of the board of directors, upon majority vote, to notify the commissioner~~[executive director]~~ of any information indicating any member insurer may be insolvent or in a financial condition hazardous to the policyholders or the public.

(2) The board of directors may, upon majority vote, request that the commissioner~~[executive director]~~ order an examination of any member insurer which the board in good faith believes may be in a financial condition hazardous to the policyholders or the public. Within thirty (30) days of the receipt of such request, the commissioner~~[executive director]~~ shall begin such examination. The examination may be conducted as a National Association of Insurance Commissioners examination or may be conducted by such persons as the commissioner~~[executive director]~~ designates. The cost of such examination shall be paid by the association and the examination report shall be treated as are other examination reports. In no event shall such examination report be released to the board of directors prior to its release to the public, but this shall not preclude the commissioner~~[executive director]~~ from complying with subsection (3). The

1 commissioner~~[executive director]~~ shall notify the board of directors when the  
 2 examination is completed. The request for an examination shall be kept on file by  
 3 the commissioner~~[executive director]~~ but it shall not be open to public inspection  
 4 prior to the release of the examination report to the public.

5 (3) It shall be the duty of the commissioner~~[executive director]~~ to report to the board of  
 6 directors when the commissioner~~[he]~~ has reasonable cause to believe that any  
 7 member insurer examined or being examined at the request of the board of directors  
 8 may be insolvent or in a financial condition hazardous to the policyholders or the  
 9 public.

10 (4) The board of directors may, upon majority vote, make reports and recommendations  
 11 to the commissioner~~[executive director]~~ upon any matter germane to the solvency,  
 12 liquidation, rehabilitation or conservation of any member insurer. Such reports and  
 13 recommendations shall not be considered public documents.

14 (5) The board of directors may, upon majority vote, make recommendations to the  
 15 commissioner~~[executive director]~~ for the detection and prevention of insurer  
 16 insolvencies.

17 (6) The board of directors shall, at the conclusion of any insurer insolvency in which  
 18 the association was obligated to pay covered claims, prepare a report on the history  
 19 and causes of such insolvency, based on the information available to the  
 20 association, and submit such report to the commissioner~~[executive director]~~.

21 ➔Section 1470. KRS 304.36-140 is amended to read as follows:

22 The association shall be subject to examination and regulation by the  
 23 commissioner~~[executive director]~~. The board of directors shall submit, not later than  
 24 March 30 of each year, a financial report for the preceding calendar year in a form  
 25 approved by the commissioner~~[executive director]~~.

26 ➔Section 1471. KRS 304.36-170 is amended to read as follows:

27 There shall be no liability on the part of and no cause of action of any nature shall arise

1 against any member insurer, the association or its agents or employees, the board of  
 2 directors, or the commissioner~~[executive director]~~, or the commissioner's~~[his]~~  
 3 representatives for any action taken by them in the performance of their powers and  
 4 duties under this subtitle.

5 ➔ Section 1472. KRS 304.37-010 is amended to read as follows:

6 As used in this subtitle, the following terms shall have the respective meanings set forth,  
 7 unless the context shall otherwise require:

8 (1) The term "commissioner~~[executive director]~~" shall mean the  
 9 commissioner~~[executive director]~~ of insurance or the Department~~[Office]~~ of  
 10 Insurance, as appropriate.

11 (2) "Insurer" includes every person engaged as principal and as indemnitor, surety, or  
 12 contractor in the business of entering into contracts of insurance.

13 (3) An "insurance holding company system" consists of two (2) or more affiliated  
 14 persons, one (1) or more of which is an insurer.

15 (4) An "affiliate", or person "affiliated" with a specific person, is a person that directly,  
 16 or indirectly through one (1) or more intermediaries, controls, or is controlled by, or  
 17 is under common control with, the person specified.

18 (5) A "person" is an individual, a corporation, a partnership, an association, a joint  
 19 stock company, an unincorporated organization, any similar entity, or any  
 20 combination of the foregoing acting in concert, but shall not include any bank in its  
 21 fiduciary capacity or securities broker performing no more than the usual and  
 22 customary broker's function.

23 (6) A "subsidiary" of a specified person is an affiliate controlled by the person directly  
 24 or indirectly through one (1) or more intermediaries.

25 (7) The term "voting security" shall include any security convertible into or evidencing  
 26 a right to acquire a voting security.

27 (8) The terms "control," "controlling," "controlled by," and "under common control

with" mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a loan contract or commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent (10%) or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by KRS 304.37-020(12) that control does not exist in fact. The commissioner~~[executive-director]~~ may determine, after forwarding all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

→Section 1473. KRS 304.37-020 is amended to read as follows:

- (1) Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the commissioner~~[executive-director]~~, except a foreign or alien insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this section. For an alien insurer, the domiciliary state shall be deemed to be its state of entry. Any insurer which is subject to registration under this section shall register within sixty (60) days after June 16, 1972, or fifteen (15) days after it becomes subject to registration, whichever is later, and annually thereafter by April 1 of each year for the previous calendar year, unless the commissioner~~[executive-director]~~ for good cause shown extends the time for registration, and then within the extended time. The commissioner~~[executive-director]~~ may require any authorized insurer which is a member of a holding company system which is not subject to registration

1 under this section to furnish a copy of the registration statement or other  
 2 information filed by the insurer with the insurance regulatory authority of its  
 3 domiciliary jurisdiction.

4 (2) Every insurer subject to registration shall file a registration statement on a form  
 5 provided by the commissioner~~[executive director]~~, which shall contain current  
 6 information about:

7 (a) The capital structure, general financial condition, ownership, and management  
 8 of the insurer and any person controlling the insurer;

9 (b) The identity of every member of the insurance holding company system;

10 (c) The following agreements in force, relationships subsisting, and transactions  
 11 currently outstanding between such insurer and its affiliates:

12 1. Loans to, other investments in, or purchases, sales, or exchanges of  
 13 securities of the affiliates by the insurer or of the insurer by its affiliates;

14 2. Purchases, sales, or exchanges of assets;

15 3. Transactions not in the ordinary course of business;

16 4. Guarantees or undertakings for the benefit of an affiliate which result in  
 17 an actual contingent exposure of the insurer's assets to liability, other  
 18 than insurance contracts entered in the ordinary course of the insurer's  
 19 business;

20 5. All management and service contracts and all cost-sharing  
 21 arrangements;

22 6. All reinsurance agreements;

23 7. Dividend and other distributions to shareholders; and

24 8. Consolidated tax allocation agreements;

25 (d) Any pledge of the insurer's stock, including stock of any subsidiary or  
 26 controlling affiliate for a loan made to any member of the insurance holding  
 27 company system; and



- 1 (e) Other matters concerning transactions between registered insurers and any  
2 affiliates as may be included from time to time in any registration forms  
3 adopted or approved by the commissioner~~[executive director]~~.
- 4 (3) It shall not be necessary to disclose information on the registration statement filed  
5 pursuant to subsection (2) of this section if the information is not material for the  
6 purposes of this section. Unless the commissioner~~[executive director]~~ by  
7 administrative regulation or order provides otherwise, sales, purchases, exchanges,  
8 loans, or extensions of credit, or investments, involving one-half of one percent  
9 (0.5%) or less of an insurer's admitted assets as of the thirty-first day of December  
10 next preceding shall not be deemed material for purposes of this section.
- 11 (4) Each registered insurer shall keep current the information required to be disclosed  
12 in its registration statement by reporting all material changes or additions on  
13 amendment forms provided by the commissioner~~[executive director]~~ within thirty  
14 (30) days~~[(30)]~~ after the end of the month in which it learns of each change or  
15 addition.
- 16 (5) All registration statements shall contain a summary outlining all items in the current  
17 registration statement representing changes from the prior registration statement.
- 18 (6) Subject to KRS 304.37-030(5), each registered insurer shall report to the  
19 commissioner~~[executive director]~~ all dividends and other distributions to  
20 shareholders within fifteen (15) business days following the dividend or distribution  
21 declaration.
- 22 (7) Any person within an insurance holding company system subject to registration  
23 shall be required to provide complete and accurate information to an insurer, if the  
24 information is reasonably necessary to enable the insurer to comply with the  
25 provisions of this subtitle.
- 26 (8) The commissioner~~[executive director]~~ shall terminate the registration of any insurer  
27 which demonstrates that it no longer is a member of an insurance holding company

1 system.

2 (9) The commissioner~~[executive director]~~ may require or allow two (2) or more  
3 affiliated insurers subject to registration to file a consolidated registration statement  
4 or consolidated reports amending their consolidated registration statement or their  
5 individual registration statements.

6 (10) The commissioner~~[executive director]~~ may allow an insurer which is authorized to  
7 do business in this state and which is part of an insurance holding company system  
8 to register on behalf of any affiliated insurer which is required to register under  
9 subsection (1) and to file all information and material required to be filed under this  
10 section.

11 (11) The provisions of this section shall not apply to any insurer, information, or  
12 transaction if and to the extent that the commissioner~~[executive director]~~ by  
13 administrative regulation or order shall exempt it from the provisions of this  
14 section.

15 (12) Any person may file with the commissioner~~[executive director]~~ a disclaimer of  
16 affiliation with any authorized insurer or a disclaimer may be filed by the insurer or  
17 any member of an insurance holding company system. The disclaimer shall fully  
18 disclose all material relationships and bases for affiliation between the persons and  
19 the insurer as well as the basis for disclaiming the affiliation. After a disclaimer has  
20 been filed, the insurer shall be relieved of any duty to register or report under this  
21 section which may arise out of the insurer's relationship with the person unless and  
22 until the commissioner~~[executive director]~~ disallows the disclaimer. The  
23 commissioner~~[executive director]~~ shall disallow the disclaimer only after furnishing  
24 all parties in interest with notice and opportunity to be heard and after making  
25 specific findings of fact to support the disallowance.

26 (13) The failure to file a registration statement or any amendment thereto required by  
27 this section within the time specified for the filing shall be a violation of this

1 subtitle.

2 ➔Section 1474. KRS 304.37-030 is amended to read as follows:

3 (1) Material transactions by registered insurers with their affiliates shall be subject to  
4 the following standards:

5 (a) The terms shall be fair and reasonable;

6 (b) Charges or fees for services performed shall be reasonable;

7 (c) Expenses incurred and payment received shall be allocated to the insurer in  
8 conformity with consistently applied accounting practices;

9 (d) The books, accounts, and records of each party shall be maintained to clearly  
10 and accurately disclose the precise nature and details of the transactions; and

11 (e) The insurer's surplus as regards policyholders, following any dividends or  
12 distributions to shareholder affiliates, shall be reasonable in relation to the  
13 insurer's outstanding liabilities and adequate to its financial needs.

14 (2) (a) The following transactions involving a domestic insurer and any person in its  
15 holding company system shall not be entered into unless the insurer has  
16 notified the commissioner~~[executive-director]~~ in writing of its intention to  
17 enter into the transaction at least thirty (30) days prior to the transaction, or a  
18 shorter period as the commissioner~~[executive-director]~~ may permit, and the  
19 commissioner~~[executive-director]~~ has not disapproved it within that time:

20 1. Sales, purchases, exchanges, loans, or extensions of credit, guarantees,  
21 or investments, if the transactions are equal to or exceed, with respect to  
22 non-life insurers, the lesser of three percent (3%) of the insurer's  
23 admitted assets or twenty-five percent (25%) of surplus as regards  
24 policyholders, or with respect to life insurers, three percent (3%) of the  
25 insurer's admitted assets, each as of December 31 next preceding.

26 2. Loans or extensions of credit to any person who is not an affiliate, if the  
27 insurer makes the loans or extensions of credit with the agreement or

1 understanding that the proceeds of the transactions, in whole or in  
 2 substantial part, are to be used to make loans or extensions of credit to,  
 3 to purchase assets of, or to make investments in, any affiliate of the  
 4 insurer making the loans or extensions of credit if the transactions are  
 5 equal to or exceed, with respect to non-life insurers, the lesser of three  
 6 percent (3%) of the insurer's admitted assets or twenty-five percent  
 7 (25%) of surplus as regards policyholders, or, with respect to life  
 8 insurers, three percent (3%) of the insurer's admitted assets, each as of  
 9 December 31 next preceding.

10 3. Reinsurance agreements or modifications in which the reinsurance  
 11 premium or a change in the insurer's liabilities equals or exceeds five  
 12 percent (5%) of the insurer's surplus as regards policyholders, as of  
 13 December 31 next preceding, including those agreements which may  
 14 require as consideration the transfer of assets from an insurer to a  
 15 nonaffiliate, if an agreement or understanding exists between the insurer  
 16 and nonaffiliate that any portion of the assets will be transferred to one  
 17 (1) or more affiliates of the insurer;

18 4. All management agreements, service contracts, and all cost sharing  
 19 arrangements; and

20 5. Any material transactions, specified by regulation, which the  
 21 commissioner~~[executive director]~~ determines may adversely affect the  
 22 interests of the insurer's policyholders.

23 (b) This subsection shall not authorize or permit any transactions which, in the  
 24 case of an insurer not a member of the same holding company system, would  
 25 be otherwise contrary to law.

26 (c) A domestic insurer shall not enter into transactions which are part of a plan or  
 27 series of like transactions with persons within the holding company system if

the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would otherwise occur. If the commissioner~~executive director~~ determines that the separate transactions were entered into over any twelve (12) month period for avoidance purposes, the commissioner~~he~~ may exercise his or her authority under KRS 304.99-151.

(d) The commissioner~~executive director~~, in reviewing transactions pursuant to this subsection, shall consider whether the transactions comply with the standards set forth in subsection (1) of this section and whether they may adversely affect the interests of policyholders.

(e) The commissioner~~executive director~~ shall be notified within thirty (30) days of any investment of the domestic insurer in any one (1) corporation if the total investment in the corporation by the insurance holding company exceeds ten percent (10%) of the corporation's voting securities.

(3) (a) Notwithstanding the control of a domestic insurer by any person, the officers and directors of the insurer shall not be relieved of any obligation or liability to which they would otherwise be subject by law, and the insurer shall be managed so as to assure its separate operating identity consistent with this chapter.

(b) Nothing in this section precludes a domestic insurer from having or sharing a common management or cooperative or joint use of personnel, property, or services with one (1) or more other persons under arrangements which meet the standards of subsection (1) of this section.

(4) The following factors, among others, shall be considered in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs:

(a) The size of the insurer as measured by its assets, capital and surplus, reserves,

- 1 premium writings, insurance in force, and other appropriate criteria;
- 2 (b) The extent to which the insurer's business is diversified among the several
- 3 lines of insurance;
- 4 (c) The number and size of risks insured in each line of business;
- 5 (d) The extent of the geographical dispersion of the insurer's insured risks;
- 6 (e) The nature and extent of the insurer's reinsurance program;
- 7 (f) The quality, diversification, and liquidity of the insurer's investment portfolio;
- 8 (g) The recent past and projected future trend in the size of the insurer's surplus as
- 9 regards policyholders;
- 10 (h) The surplus as regards policyholders maintained by other comparable insurers;
- 11 (i) The adequacy of the insurer's reserves; and
- 12 (j) The quality and liquidity of investments in subsidiaries. The
- 13 commissioner~~executive director~~ may treat any investment as a disallowed
- 14 asset for purposes of determining the adequacy of surplus as regards
- 15 policyholders if in his or her judgment the investment warrants.
- 16 (5) No insurer subject to registration under KRS 304.37-020 shall pay any
- 17 extraordinary dividend or make any other extraordinary distribution to its
- 18 stockholders until thirty (30) days after the commissioner~~executive director~~ has
- 19 received notice of the declaration thereof and has not within the period disapproved
- 20 the payment, or the commissioner~~executive director~~ shall have approved the
- 21 payment within the thirty (30) day period. For purposes of this section, an
- 22 extraordinary dividend or distribution is any dividend or distribution which,
- 23 together with other dividends or distribution made within the preceding twelve (12)
- 24 months, exceeds the lesser of (a) ten percent (10%) of the insurer's surplus as
- 25 regards policyholders as of December 31 next preceding, or (b) the net gain from
- 26 operations of the insurer company, if the insurer is a life insurer, or the net income,
- 27 if the insurer is not a life insurer, for the twelve (12) month period ending December

31 next preceding, but shall not include pro rata distribution of any class of the insurer's own securities. Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's~~executive director's~~ approval thereof, and the declaration shall confer no rights upon stockholders until the commissioner~~executive director~~ has approved the payment of the dividend or distribution or until the commissioner~~executive director~~ has not disapproved the payment within the thirty (30) day period referred to in this section.

→ Section 1475. KRS 304.37-040 is amended to read as follows:

- (1) Subject to the limitation contained in this section and in addition to the powers which the commissioner~~executive director~~ has under KRS Chapter 304 relating to the examination of insurers, the commissioner~~executive director~~ shall also have the power to order any insurer registered under KRS 304.37-020 to produce such records, books, or other information papers in the possession of the insurer or its affiliates as shall be necessary to ascertain the financial condition or legality of conduct of such insurer. In the event such insurer fails to comply with such order, the commissioner~~executive director~~ shall have the power to examine such affiliates to obtain such information.
- (2) The commissioner~~executive director~~ shall exercise his or her power under subsection (1) only if the examination of the insurer under KRS Chapter 304 is inadequate or the interests of the policyholders of such insurer may be adversely affected.
- (3) The commissioner~~executive director~~ may retain at the registered insurer's expense such attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's~~executive director's~~ staff as shall be reasonably necessary to assist in the conduct of the examination under subsection (1). Any persons so retained shall be under the direction and control of the commissioner~~executive director~~

1 and shall act in a purely advisory capacity.

2 (4) Each registered insurer producing for examination records, books, and papers  
3 pursuant to subsection (1) shall be liable for and shall pay the expense of such  
4 examination in accordance with the provisions of KRS Chapter 304.

5 ➔Section 1476. KRS 304.37-050 is amended to read as follows:

6 All information, documents, and copies thereof obtained by or disclosed to the  
7 commissioner~~[executive director]~~ by any other person in the course of an examination or  
8 investigation made pursuant to KRS 304.37-040 and all information reported pursuant to  
9 KRS 304.37-020, shall be given confidential treatment and shall not be subject to  
10 subpoena and shall not be made public by the commissioner~~[executive director]~~ or any  
11 other person, except to insurance departments of other states, without the prior written  
12 consent of the insurer to which it pertains unless the commissioner~~[executive director]~~,  
13 after giving the insurer and its affiliates who would be affected thereby notice and  
14 opportunity to be heard, determines that the interests of policyholders, shareholders, or  
15 the public will be served by the publication thereof, in which event the commissioner~~[he]~~  
16 may publish all or any part thereof in such manner as the commissioner~~[he]~~ may deem  
17 appropriate.

18 ➔Section 1477. KRS 304.37-060 is amended to read as follows:

19 The commissioner~~[executive director]~~ may, upon notice and opportunity for all interested  
20 persons to be heard, issue such orders as shall be necessary to carry out the provisions of  
21 this subtitle.

22 ➔Section 1478. KRS 304.37-070 is amended to read as follows:

23 Whenever it appears to the commissioner~~[executive director]~~ that any person has  
24 committed a violation of this subtitle which so impairs the financial condition of a  
25 domestic insurer as to threaten insolvency or make the further transaction of business by  
26 it hazardous to its policyholders, creditors, shareholders, or the public, then the  
27 commissioner~~[executive director]~~ may proceed as provided in KRS Chapter 304 to take



1 possession of the property of such domestic insurer and to conduct the business thereof.

2 ➔Section 1479. KRS 304.37-080 is amended to read as follows:

3 Whenever it appears to the commissioner~~[executive-director]~~ that any person has  
4 committed a violation of this subtitle which makes the continued operation of an insurer  
5 contrary to the interest of policyholders or the public, the commissioner~~[executive~~  
6 ~~director]~~ may, after giving notice and an opportunity to be heard, determine to suspend,  
7 revoke, or refuse to renew such insurer's license or authority to do business in this state  
8 for such period as the commissioner~~[he]~~ finds is required for the protection of  
9 policyholders or the public. Any such determination shall be accompanied by specific  
10 findings of fact and conclusions of law.

11 ➔Section 1480. KRS 304.37-090 is amended to read as follows:

12 The commissioner~~[executive-director]~~ shall, if requested by any interested party served  
13 with notice as required herein, make a complete record of any testimony, evidence, and  
14 proceedings at any hearing conducted pursuant to this subtitle.

15 ➔Section 1481. KRS 304.37-100 is amended to read as follows:

16 (1) Any person aggrieved by any act, determination, rule, regulation, order, or any other  
17 action of the commissioner~~[executive-director]~~ pursuant to this subtitle, may file  
18 appropriate proceedings in the Franklin Circuit Court or other court of competent  
19 jurisdiction for proper relief.

20 (2) The filing of an appeal pursuant to this section or other court proceeding shall not  
21 stay the application of such order or other action of the commissioner~~[executive~~  
22 ~~director]~~ unless the court, after giving notice to the parties and an opportunity to be  
23 heard, determines that such a stay would not be detrimental to the interest of  
24 policyholders, shareholders, creditors, or the public.

25 (3) Any person aggrieved by any failure of the commissioner~~[executive-director]~~ to act  
26 or make a determination required by this subtitle may petition the Franklin Circuit  
27 Court for a mandatory injunction or other injunctive relief directing the

1 commissioner~~[executive director]~~ to act or make such determination forthwith.

2 ➔Section 1482. KRS 304.37-110 is amended to read as follows:

3 (1) Any domestic insurer, either by itself or in cooperation with one (1) or more  
4 persons, may organize or acquire one (1) or more subsidiaries engaged in the  
5 following kinds of business:

6 (a) Any kind of insurance business authorized by the jurisdiction in which it is  
7 incorporated;

8 (b) Acting as an insurance agent for its parent or any of its parent's insurer  
9 subsidiaries;

10 (c) Investing, reinvesting, or trading in securities for its own account, that of its  
11 parent, any subsidiary of its parent, or any affiliate or subsidiary;

12 (d) Management of any investment company subject to or registered pursuant to  
13 the Investment Company Act of 1940, as amended, including related sales and  
14 services;

15 (e) Acting as a broker-dealer subject to or registered pursuant to the Securities  
16 Exchange Act of 1934, as amended;

17 (f) Rendering investment advice to governments, government agencies,  
18 corporations, or other organizations or groups;

19 (g) Rendering other services related to the operations of an insurance business,  
20 such as actuarial, loss prevention, safety engineering, data processing,  
21 accounting, claims, appraisal, and collection services;

22 (h) Ownership and management of assets which the parent corporation may own  
23 or manage if the aggregate investment by the insurer and its subsidiaries  
24 acquired or organized pursuant to this paragraph shall not exceed the  
25 limitations applicable to these investments by the insurer. This paragraph shall  
26 not prohibit investments permitted under KRS 304.7-120;

27 (i) Acting as an administrative agent for a governmental instrumentality which is

- 1 performing an insurance function;
- 2 (j) Financing of insurance premiums, agents, and other forms of consumer  
3 financing;
- 4 (k) Any other business activity determined by the commissioner~~executive~~  
5 ~~director~~ to be reasonably ancillary to an insurance business; and
- 6 (l) Owning a corporation or corporations engaged or organized to engage  
7 exclusively in one (1) or more businesses specified in this section.
- 8 (2) In addition to investments in common stock, preferred stock, debt obligations, and  
9 other securities permitted under this chapter, a domestic insurer may also:
- 10 (a) Invest, in common stock, preferred stock, debt obligations, and other  
11 securities of one (1) or more subsidiaries, amounts which do not exceed the  
12 lesser of ten percent (10%) of the insurer's assets or fifty percent (50%) of the  
13 insurer's surplus as regards policyholders, if after these investments, the  
14 insurer's surplus as regards policyholders will be reasonable in relation to the  
15 insurer's outstanding liabilities and adequate to meet its financial needs. In  
16 calculating the amount of these investments, investments in domestic or  
17 foreign insurance subsidiaries shall be excluded, and there shall be included:
- 18 1. Total net moneys or other consideration expended and obligations  
19 assumed in the acquisition or formation of a subsidiary, including all  
20 organizational expenses and contributions to capital and surplus of the  
21 subsidiary whether or not represented by the purchase of capital stock or  
22 issuance of other securities; and
- 23 2. All amounts expended in acquiring additional common stock, preferred  
24 stock, debt obligations, and other securities and all contributions to the  
25 capital or surplus, of a subsidiary subsequent to its acquisition or  
26 formation;
- 27 (b) Invest any amount in common stock, preferred stock, debt obligations, and

other securities of one (1) or more subsidiaries engaged or organized to engage exclusively in the ownership and management of assets authorized as investments for the insurer, if each subsidiary agrees to limit its investments in any asset so that the investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in paragraph (a) of this subsection or in Subtitle 7 of KRS Chapter 304. For the purpose of this paragraph, "the total investment of the insurer" shall include:

1. Any direct investment by the insurer in an asset; and
2. The insurer's proportionate share of any investment in an asset by any subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the ownership of the subsidiary;

(c) With the approval of the commissioner~~[executive director]~~, invest any greater amount in common stock, preferred stock, debt obligations, or other securities of one (1) or more subsidiaries, if after the investment the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(3) Investments in common stock, preferred stock, debt obligations, or other securities of subsidiaries made pursuant to subsection (2) of this section shall not be subject to any of the otherwise applicable restrictions or prohibitions contained in this chapter applicable to the investments of insurers.

(4) Whether any investment pursuant to subsection (2) of this section meets the requirements shall be determined before the investment is made, by calculating the applicable investment limitations as though the investment had already been made, taking into account the then outstanding principal balance on all previous investments in debt obligations, and the value of all previous investments in equity

1 securities as of the day they were made, net of any return of capital invested, not  
2 including dividends.

- 3 (5) If an insurer ceases to control a subsidiary, it shall dispose of any investment made  
4 pursuant to this section within three (3) years of the time of the cessation of control,  
5 or within an extension of time as the commissioner~~executive director~~ may  
6 prescribe, unless at any time after the investment has been made, the investment has  
7 met the requirements for investment under any other provision of this chapter, and  
8 the insurer has notified the commissioner~~executive director~~.

9 ➔Section 1483. KRS 304.37-120 is amended to read as follows:

- 10 (1) No person other than the issuer shall make a tender offer for, a request or invitation  
11 for tenders of, enter into any agreement to exchange securities, seek to acquire, or  
12 acquire in the open market or otherwise, any voting security of a domestic insurer if,  
13 after the consummation, the person would, directly or indirectly, or by conversion,  
14 or by exercise of any right to acquire, be in control of the insurer. No person shall  
15 enter into an agreement to merge with or to acquire control of a domestic insurer or  
16 any person controlling a domestic insurer unless, at the time of the offer, request, or  
17 invitation is made, or any agreement is entered into, or prior to the acquisition of  
18 these securities if no offer or agreement is involved, the person has filed with the  
19 commissioner~~executive director~~ and has sent to the insurer, a statement  
20 containing the information required by this section and the offer, request, invitation,  
21 agreement, or acquisition has been approved by the commissioner~~executive~~  
22 ~~director~~ in the manner prescribed in this section.

- 23 (a) For purposes of this section a domestic insurer shall include any person  
24 controlling a domestic insurer unless the person as determined by the  
25 commissioner~~executive director~~ is either directly or through its affiliates  
26 primarily engaged in business other than the business of insurance. However,  
27 the person shall file a preacquisition notification with the

1        commissioner~~[executive director]~~ containing the information required in KRS  
 2        304.37-130(3)(a) thirty (30) days prior to the proposed effective date of the  
 3        acquisition. The person who fails to file a preacquisition notification shall be  
 4        subject to the penalty set out in KRS 304.99-151. For the purposes of this  
 5        section, "person" shall not include any securities broker holding, in the usual  
 6        and customary brokers function, less than twenty percent (20%) of the voting  
 7        securities of an insurance company or of any person which controls an  
 8        insurance company.

9        (2) The statement to be filed with the commissioner~~[executive director]~~ under this  
 10       section shall be made under oath or affirmation and shall contain the following  
 11       information:

12       (a) The name and address of each person by whom or on whose behalf the merger  
 13       or other acquisition of control referred to in subsection (1) of this section is to  
 14       be effected; and

15       1. If the person is an individual, his or her principal occupation and all  
 16       offices and positions held during the past five (5) years, and any  
 17       conviction of crimes other than minor traffic violations during the past  
 18       ten (10) years; or

19       2. If the person is not an individual, a report of the nature of its business  
 20       operations during the past five (5) years or for a lesser period that the  
 21       person and any predecessors have been in existence, an informative  
 22       description of the business intended to be done by the person and the  
 23       person's subsidiaries, and a list of all individuals who are or who have  
 24       been selected to become directors or executive officers of the person, or  
 25       who perform or will perform functions appropriate to these functions.  
 26       The list shall include for each individual the information required by  
 27       subparagraph 1. of this paragraph.

- 1 (b) The source, nature, and amount of the consideration used or to be used in  
2 effecting the merger or other acquisition of control, a description of any  
3 transaction in which funds were or are to be obtained for merger or other  
4 acquisition of control, including any pledge of the insurer's stock, or the stock  
5 of any of its subsidiaries or controlling affiliates, and the identity of persons  
6 furnishing the consideration; but if a source of the consideration is a loan  
7 made in the lender's ordinary course of business, the identity of the lender  
8 shall remain confidential, if the person filing the statement so requests.
- 9 (c) Fully audited financial information as to the earnings and financial condition  
10 of each acquiring party for the preceding five (5) fiscal years of each acquiring  
11 party, or for a lesser period that the acquiring party and any predecessors have  
12 been in existence, and similar unaudited information as of a date not earlier  
13 than ninety (90) days prior to the filing of the statement.
- 14 (d) Any plans or proposals which each acquiring party may have to liquidate the  
15 insurer, to sell its assets, or merge or consolidate it with any person, or to  
16 make any other material change in its business or corporate structure or  
17 management.
- 18 (e) The number of shares of any security referred to in subsection (1) of this  
19 section which the acquiring party proposes to acquire, and the terms of the  
20 offer, request, invitation, agreement, or acquisition referred to in subsection  
21 (1) of this section, and a statement as to the method used to determine the  
22 fairness of the proposal.
- 23 (f) The amount of each class of any security referred to in subsection (1) of this  
24 section which is beneficially owned, or concerning any security referred to in  
25 subsection (1) of this section which there is a right to acquire beneficial  
26 ownership of by each acquiring party.
- 27 (g) A full description of any contracts, arrangements, or understandings with

1 respect to any security referred to in subsection (1) of this section in which  
 2 any acquiring party is involved, such as transfer of any of the securities, joint  
 3 ventures, loan or option arrangements, puts or calls, guarantees of loans,  
 4 guarantees against loss or guarantees of profits, division of losses or profits, or  
 5 the giving or withholding of proxies. The description shall identify the persons  
 6 with whom these contracts, arrangements, or understandings have been  
 7 entered into.

8 (h) A description of the purchase of any security referred to in subsection (1) of  
 9 this section during the twelve (12) calendar months preceding the filing of the  
 10 statement by any acquiring party, including the dates of purchase, names of  
 11 the purchasers, and consideration paid or agreed to be paid.

12 (i) A description of any recommendations to purchase any security referred to in  
 13 subsection (1) of this section made during the twelve (12) calendar months  
 14 preceding the filing of the statement, by any acquiring party, or by anyone  
 15 based upon interviews or at the suggestion of the acquiring party.

16 (j) Copies of all tender offers for requests, or invitations for tenders of, exchange  
 17 offers for, and agreements to acquire or exchange any securities referred to in  
 18 subsection (1) of this section, and of additional soliciting material distributed  
 19 which relates.

20 (k) The term of any agreement, contract, or understanding made with, or proposed  
 21 to be made with any broker-dealer, as to solicitation of securities referred to in  
 22 subsection (1) of this section for tender, and the amount of any fees,  
 23 commissions, or other compensation to be paid to broker-dealers with regard  
 24 to subsection (1) of this section.

25 (l) Any additional information as the commissioner~~executive director~~ may by  
 26 regulation prescribe as necessary or appropriate for the protection of  
 27 policyholders of the insurer or in the public interest.



- 1 (m) If the person required to file the statement referred to in subsection (1) of this  
2 section is a partnership, limited partnership, syndicate, or other group, the  
3 commissioner~~executive director~~ may require that the information called for  
4 by paragraphs (a) to (l) of this subsection shall be given with respect to each  
5 partner of the partnership or limited partnership, each member of the syndicate  
6 or other group, and each person who controls the partner or member. If any  
7 partner, member, or person is a corporation, or the person required to file the  
8 statement referred to in subsection (1) of this section is a corporation, the  
9 commissioner~~executive director~~ may require that the information called for  
10 by paragraphs (a) to (l) of this subsection shall be given with respect to the  
11 corporation, each officer and director of the corporation, and each person who  
12 is directly or indirectly the beneficial owner of more than ten percent (10%) of  
13 the outstanding voting securities of the corporation.
- 14 (n) If any material change occurs in the facts in the statement filed with the  
15 commissioner~~executive director~~ and sent to the insurer pursuant to this  
16 section, an amendment stating the change, with copies of all documents and  
17 other materials relevant to the change, shall be filed with the  
18 commissioner~~executive director~~ and sent to the insurer within two (2)  
19 business days after the person learns of the change.
- 20 (3) If any offer, request, invitation, agreement, or acquisition referred to in subsection  
21 (1) of this section is proposed to be made by means of a registration statement under  
22 the Securities Act of 1933, or in circumstances requiring the disclosure of similar  
23 information under the Securities Exchange Act of 1934, or under a state law  
24 requiring similar registration or disclosure, the person required to file the statement  
25 referred to in subsection (1) of this section may utilize those documents in  
26 furnishing the information required by the statement referred to in subsection (1) of  
27 this section.

- 1 (4) (a) The commissioner~~[executive-director]~~ shall approve any merger or other  
 2 acquisition of control referred to in subsection (1) of this section unless, after  
 3 a public hearing the commissioner~~[he]~~ finds that:
- 4 1. After the change of control, the domestic insurer referred to in  
 5 subsection (1) of this section would not be able to satisfy the  
 6 requirements for issuance of a certificate of authority to write the line or  
 7 lines of insurance for which it is presently authorized;
  - 8 2. The effect of the merger or other acquisition of control would be  
 9 substantially to lessen competition in insurance in Kentucky or tend to  
 10 create a monopoly. In applying the competitive standard in this  
 11 paragraph:
    - 12 a. The informational requirements of KRS 304.37-130(3)(a) and the  
 13 standards of KRS 304.37-130(4)(b) shall apply;
    - 14 b. The merger or other acquisition shall not be disapproved if the  
 15 commissioner~~[executive-director]~~ finds that any of the situations  
 16 meeting the criteria provided by KRS 304.37-130(4)(c) exist; and
    - 17 c. The commissioner~~[executive-director]~~ may condition the approval  
 18 of the merger or other acquisition on the removal of the basis of  
 19 disapproval within a specified period of time;
  - 20 3. The financial condition of the acquiring party might jeopardize the  
 21 financial stability of the insurer or prejudice the interest of its  
 22 policyholders;
  - 23 4. The plans or proposals which the acquiring party has to liquidate the  
 24 insurer, sell its assets, consolidate or merge it with any person, or to  
 25 make any other material change in its business or corporate structure or  
 26 management are unfair and unreasonable to policyholders of the insurer  
 27 and not in the public interest;

1           5.    The competence, experience, and integrity of persons who would control  
 2               the operation of the insurer would not be in the interest of policyholders  
 3               of the insurer and of the public to permit the merger or other acquisition  
 4               of control; or

5           6.    The acquisition is likely to be hazardous or prejudicial to the insurance  
 6               buying public.

7           (b)   The public hearing required by this section shall be conducted as directed in  
 8               Subtitle 2 of this chapter.

9           (c)   The commissioner~~executive director~~ may retain at the acquiring person's  
 10           expense any attorneys, actuaries, accountants, and other experts not otherwise  
 11           a part of the commissioner's~~executive director's~~ staff that may be necessary  
 12           to assist the commissioner~~executive director~~ in reviewing the proposed  
 13           acquisition of control.

14       (5)   The provisions of this section shall not apply to:

15           (a)   Any transaction which is subject to the provisions of KRS 304.24-390,  
 16               dealing with the merger or consolidation of a domestic insurer; or

17           (b)   Any offer, request, invitation, agreement, or acquisition which the  
 18               commissioner~~executive director~~, by order, shall exempt from the section as  
 19               not having been made or entered into for the purpose of and not having the  
 20               effect of changing or influencing the control of, a domestic insurer, or not  
 21               comprehended within the purposes of this section; or

22           (c)   Any acquisition of stock of a former mutual by an affiliate company that  
 23               occurs in connection with the conversion of a mutual insurer to a stock insurer  
 24               under KRS 304.24-600 to 304.24-625, provided that no person acquires  
 25               control of the parent company. For purposes of this paragraph, "former  
 26               mutual" has the meaning provided in KRS 304.24-601.

27       (6)   The following shall be violations of this section:

- 1 (a) The failure to file any statement, amendment, or other material required to be  
 2 filed pursuant to subsection (1) or (2) of this section; or
- 3 (b) The effectuation or any attempt to effectuate an acquisition of control of, or  
 4 merger with, a domestic insurer unless the commissioner~~[executive-director]~~  
 5 has given his or her approval.
- 6 (7) The courts of this state shall have jurisdiction over every person not resident,  
 7 domiciled, or authorized to do business in this state who files a statement with the  
 8 commissioner~~[executive-director]~~ under this section, and overall actions involving  
 9 such person arising out of violations of this section. Each person shall be deemed to  
 10 have performed acts equivalent to and constituting an appointment by the person of  
 11 the Secretary of State to be his or her true and lawful attorney upon whom may be  
 12 served all lawful process in any action, suit, or proceeding arising out of the  
 13 violations of this section. Copies of all lawful process shall be served on the  
 14 Secretary of State and transmitted to the person at his or her last known address by  
 15 the Secretary of State in the same manner as service of process on foreign insurers.

16 ➔Section 1484. KRS 304.37-130 is amended to read as follows:

- 17 (1) The following definitions shall apply for the purposes of this section only:
- 18 (a) "Acquisition" means any agreement, arrangement, or activity the  
 19 consummation of which results in a person acquiring directly or indirectly the  
 20 control of another person, such as the acquisition of voting securities, the  
 21 acquisition of assets, bulk reinsurance, and mergers.
- 22 (b) An "involved insurer" includes an insurer which either acquires or is acquired,  
 23 is affiliated with an acquirer or acquired, or is the result of a merger.
- 24 (2) (a) This section applies to any acquisition in which there is a change of control of  
 25 an insurer authorized to do business in Kentucky, except as set forth in  
 26 paragraph (b) of this subsection.
- 27 (b) This section shall not apply to the following:

1. An acquisition subject to approval or disapproval of the commissioner~~[executive director]~~ pursuant to KRS 304.37-120;
2. A purchase of securities solely for the investment purposes so long as the securities are not used by voting or otherwise to cause or attempt to cause the substantial lessening of competition in any insurance market in Kentucky. If a purchase of securities results in a presumption of control under KRS 304.37-010(8), it is not solely for investment purposes unless the insurance regulatory official of the insurer's state of domicile accepts a disclaimer of control, or affirmatively finds that control does not exist, and the disclaimer action or affirmative finding is communicated by the domiciliary insurance regulatory official to the commissioners~~[executive directors]~~;
3. If the acquisition of a person by another person when both persons are neither directly nor through affiliates primarily engaged in the business of insurance, if preacquisition notification is filed with the commissioner~~[executive director]~~ in accordance with subsection (3)(a) of this section thirty (30) days prior to the proposed effective date of the acquisition. However, the acquisition notification shall not be required for exclusion from this section if the acquisition would otherwise be excluded from this section by any other subparagraph of this paragraph;
4. The acquisition of already affiliated persons;
5. An acquisition if, as an immediate result of the acquisition:
  - a. The combined market share of the involved insurers would not exceed five percent (5%) of the total market;
  - b. There would be no increase in any market share; or
  - c. The combined market share of the involved insurers would not exceed twelve percent (12%) of the total market; and the market

share would not increase by more than two percent (2%) of the total market.

For the purpose of this subparagraph (b)5., a market means direct written insurance premium in Kentucky for a line of business as contained in the annual statement required to be filed by insurers authorized to do business in Kentucky;

6. An acquisition for which a preacquisition notification would be required pursuant to this section due solely to the resulting effect on the ocean marine insurance line of business; and

7. An acquisition of an insurer whose domiciliary insurance regulatory official affirmatively finds that the insurer is in failing condition, there is lack of feasible alternative to improving the condition, the public benefits of improving the insurer's condition through the acquisition exceed the public benefits that would arise from not lessening competition, and the findings are communicated by the domiciliary insurance regulatory official to the commissioner~~executive director~~.

(3) An acquisition covered by subsection (2) of this section may be subject to an order pursuant to subsection (5) of this section or KRS 304.37-010 unless the acquiring person files a preacquisition notification and the waiting period has expired. The acquired person may file a preacquisition notification. The commissioner~~executive director~~ shall give confidential treatment to information submitted under this subsection in the same manner as provided in KRS 304.37-050.

(a) The preacquisition notification shall be in the form and contain the information prescribed by the National Association of Insurance Commissioners relating to those markets which, under subsection (2)(b)5. of this section, cause the acquisition not to be exempted from the provisions of this section. The commissioner~~executive director~~ may require additional

1 material and information the commissioner~~[he]~~ deems necessary to determine  
 2 whether the proposed acquisition, if consummated, would violate the  
 3 competitive standard of subsection (4) of this section. The required  
 4 information may include an opinion of an economist as to the competitive  
 5 impact of the acquisition in Kentucky accompanied by a summary of the  
 6 education and experience of the economist indicating his or her ability to  
 7 render an informed opinion.

8 (b) The waiting period required shall begin on the date of receipt by the  
 9 commissioner~~[executive director]~~ of a preacquisition notification and shall  
 10 end on the earlier of the thirtieth day after the date of receipt, or termination of  
 11 the waiting period by the commissioner~~[executive director]~~. Prior to the end  
 12 of the waiting period, the commissioner~~[executive director]~~ may, on a one-  
 13 time basis, require the submission of additional needed information relevant to  
 14 the proposed acquisition; if the submission is required, the waiting period  
 15 shall end on the earlier of the thirtieth day after receipt of the additional  
 16 information by the commissioner~~[executive director]~~ or termination of the  
 17 waiting period by the commissioner~~[executive director]~~.

18 (4) (a) The commissioner~~[executive director]~~ may enter an order under subsection  
 19 (5)(a) of this section with respect to an acquisition if there is substantial  
 20 evidence that the effect of the acquisition may be to lessen substantially  
 21 competition in any line of insurance in Kentucky or tend to create a monopoly,  
 22 or if the insurer fails to file adequate information in compliance with  
 23 subsection (3) of this section.

24 (b) In determining whether a proposed acquisition would violate the competitive  
 25 standard of paragraph (a) of this subsection, the commissioner~~[executive~~  
 26 ~~director]~~ shall consider the following:

27 1. Any acquisition covered under subsection (2) of this section involving

two (2) or more insurers competing in the same market is prima facie evidence of violation of the competitive standards:

a. If the market is highly concentrated and the involved insurers possess the following shares of the market:

Insurer A	Insurer B
4%	4% or more
10%	2% or more
15%	1% or more;

or

b. If the market is not highly concentrated and the involved insurers possess the following shares of the market:

Insurer A	Insurer B
5%	5% or more
10%	4% or more
15%	3% or more
19%	1% or more.

A highly concentrated market means one in which the share of the four (4) largest insurers is seventy-five percent (75%) or more of the market. Percentages not shown in the tables are interpolated proportionately to the percentages that are shown. If more than two (2) insurers are involved, exceeding the total of the two (2) columns in the table is prima facie evidence of violation of the competitive standard in paragraph (a) of this subsection. For the purpose of this subparagraph, the insurer with the largest share of the market shall be deemed to be insurer A.

2. There is a significant trend toward increased concentration when the aggregate market share of any grouping of the largest insurers in the market, from the two (2) largest to the eight (8) largest, has increased by



1           seven percent (7%) or more of the market over a period of time  
 2           extending from any base year five (5) to ten (10) years prior to the  
 3           acquisition up to the time of the acquisition. Any acquisition or merger  
 4           covered under subsection (2) of this section involving two (2) or more  
 5           insurers competing in the same market is prima facie evidence of  
 6           violation of the competitive standard in paragraph (a) of this subsection  
 7           if:

- 8           a.   There is a significant trend toward increased concentration in the
- 9                market;
- 10          b.   One of the insurers involved is one of the insurers in a grouping of
- 11                the large insurers showing the requisite increase in the market
- 12                share; and
- 13          c.   Another involved insurer's market is two percent (2%) or more.

14          3.   For the purposes of subsection (4)(b) of this section:

- 15          a.   The term "insurer" includes any company or group of companies
- 16                under common management, ownership or control;
- 17          b.   The term "market" means the relevant product and geographical
- 18                markets. In determining the relevant product and geographical
- 19                markets, the commissioner~~executive director~~ shall give due
- 20                consideration to factors such as the definitions or guidelines, if
- 21                any, promulgated by the National Association of Insurance
- 22                Commissioners and to information, if any, submitted by parties to
- 23                the acquisition. In the absence of sufficient information to the
- 24                contrary, the relevant product market is assumed to be the direct
- 25                written insurance premium for a line of business, the line being
- 26                that used in the annual statement required to be filed by insurers
- 27                doing business in Kentucky, and the relevant geographical market

1 is assumed to be Kentucky; and

2 c. The burden of showing prima facie evidence of violation of the  
3 competitive standard rests upon the commissioner~~[executive~~  
4 ~~director]~~.

5 4. Even though an acquisition is not prima facie violative of the  
6 competitive standard under paragraph (b) of this subsection, the  
7 commissioner~~[executive—director]~~ may establish the requisite  
8 anticompetitive effect based upon other substantial evidence. Even  
9 though an acquisition is prima facie violative of the competitive  
10 standard under paragraph (b) of this subsection, a party may establish the  
11 absence of the requisite anticompetitive effect based upon other  
12 substantial evidence. Relevant factors in making this determination shall  
13 be such factors as market shares, volatility of ranking of market leaders,  
14 number of competitors, concentration, trend of concentration in the  
15 industry, and ease of entry into and exit from the market.

16 (c) An order shall not be entered under subsection (5)(a) of this section if:

- 17 1. The acquisition will yield substantial economies of scale or economies  
18 in resource utilization that cannot be feasibly achieved in any other way,  
19 and the public benefits which would arise from the economies exceed  
20 the public benefits which would arise from not lessening competition; or
- 21 2. The acquisition will substantially increase the availability of insurance,  
22 and the public benefits of the increase exceed the public benefits which  
23 would arise from not lessening competition.

24 (5) (a) If an acquisition violates the standards of this section, the  
25 commissioner~~[executive director]~~ may enter an order:

- 26 1. Requiring an involved insurer to cease and desist from doing business in  
27 Kentucky with respect to the line or lines of insurance involved in the

1 violation; or

2 2. Denying the application of an acquired or acquiring insurer for a  
3 certificate of authority to do business in Kentucky.

4 (b) The order referred to in paragraph (a) of this subsection shall be entered  
5 pursuant to a hearing held under Subtitle 2 of this chapter.

6 ➔Section 1485. KRS 304.37-150 is amended to read as follows:

7 (1) No security which is the subject of any agreement or arrangement regarding  
8 acquisition, or which is acquired or to be acquired, in contravention of the  
9 provisions of this chapter or of any rule, administrative regulation, or order issued  
10 by the commissioner~~executive director~~ may be voted at any shareholders' meeting,  
11 or may be counted for quorum purposes, and any action of shareholders requiring  
12 the affirmative vote of a percentage of shares may be taken as though the securities  
13 were not issued and outstanding; but no action taken at the meeting shall be  
14 invalidated by the voting of the securities, unless the action would materially affect  
15 control of the insurer or unless the courts of this state have so ordered. If an insurer  
16 or the commissioner~~executive director~~ has reason to believe that any security of  
17 the insurer has been or is about to be acquired in contravention of the provisions of  
18 this chapter or of any rule, administrative regulation, or order issued by the  
19 commissioner~~executive director~~, the insurer or the commissioner~~executive~~  
20 ~~director~~ may apply to the Circuit Court for the county in which the insurer has its  
21 principal place of business to enjoin any offer, request, invitation, agreement, or  
22 acquisition made in contravention of KRS 304.37-130 or any other provision of this  
23 chapter, or any rule, administrative regulation, or order issued by the  
24 commissioner~~executive director~~ to enjoin the voting of any security so acquired,  
25 to void any vote of the security already cast at any meeting of shareholders, and for  
26 any other equitable relief as required by the nature of the case and the interest of the  
27 insurer's policyholders, creditors, shareholders, or the public.

1 (2) In any case where a person has acquired or is proposing to acquire any voting  
 2 securities in violation of this chapter or any rule, administrative regulation, or order  
 3 issued by the commissioner~~[executive director]~~, the Circuit Court for Franklin  
 4 County or the Circuit Court for the county in which the insurer has its principal  
 5 place of business may, upon notice the court deems appropriate, upon the  
 6 application of the insurer or the commissioner~~[executive director]~~ seize or sequester  
 7 any voting securities of the insurer owned directly or indirectly by the person, and  
 8 issue the appropriate order to effectuate the provisions of this subtitle.

9 (3) Notwithstanding any other provisions of law, for the purposes of this chapter the  
 10 situs of the ownership of the securities of domestic insurers shall be deemed to be in  
 11 this state.

12 ➔Section 1486. KRS 304.37-500 is amended to read as follows:

13 The following definitions shall apply to KRS 304.37-500 to 304.37-580:

14 (1) "Interested person" means:

- 15 (a) Any affiliated person of a company;
- 16 (b) Any member of the immediate family of any natural person who is an  
 17 affiliated person of a company;
- 18 (c) Any person or partner or employee of any person who at any time since the  
 19 beginning of the last two (2) completed fiscal years of a company has acted as  
 20 legal counsel for the company; or
- 21 (d) Any natural person whom the commissioner~~[executive director]~~ by order shall  
 22 have determined to be an interested person by reason of having had, at any  
 23 time since the beginning of the last two (2) completed fiscal years of a  
 24 company, a material business or professional relationship with a company or  
 25 with the principal executive officer of the company;

26 (2) "Intermediate holding company" means a holding company which is a subsidiary of  
 27 a mutual insurance holding company and which either directly or through a

1 subsidiary intermediate holding company has one (1) or more subsidiary  
 2 reorganized insurance companies of which a majority of the voting shares of the  
 3 capital stock would otherwise have been required by KRS 304.37-505, to be at all  
 4 times owned by the mutual insurance holding company. The  
 5 commissioner~~[executive-director]~~ shall have jurisdiction over an intermediate  
 6 holding company as if it were a mutual insurance holding company;

7 (3) "Majority of the voting shares of the capital stock of the reorganized insurance  
 8 company" means shares of the capital stock of the reorganized insurance company  
 9 which carry the right to cast a majority of the votes entitled to be cast by all of the  
 10 outstanding shares of the capital stock of the reorganized insurance company for the  
 11 election of directors and on all other matters submitted to a vote of the shareholders  
 12 of the reorganized insurance company. The ownership of a majority of the voting  
 13 shares of the capital stock of the reorganized insurance company which are required  
 14 by KRS 304.37-505 to be held by the mutual insurance holding company may be  
 15 held by indirect ownership through one (1) or more intermediate holding companies  
 16 in a corporate structure approved by the commissioner~~[executive-director]~~,  
 17 provided, however, that indirect ownership through one (1) or more intermediate  
 18 holding companies shall not result in the mutual insurance holding company  
 19 owning less than the equivalent of a majority of the voting shares of the capital  
 20 stock of the reorganized insurance company;

21 (4) "Mutual insurance holding company" means a holding company organized on the  
 22 mutual plan and incorporated under the laws of Kentucky, resulting from the  
 23 reorganization of a domestic mutual insurance company in accordance with KRS  
 24 304.37-505 and 304.37-510, with one (1) or more stock insurance holding company  
 25 subsidiaries or stock insurance company subsidiaries;

26 (5) "Plan of reorganization" means a plan to reorganize a domestic mutual insurance  
 27 company by forming a mutual insurance holding company; and

1 (6) "Stock offering" means any proposed sale, exchange, transfer or other change of  
 2 ownership of stock or of securities convertible into or exchangeable or exercisable  
 3 for stock; including, but not limited to, an initial public offering, private equity  
 4 placement, or grants of stock options and other equity based compensation. For  
 5 purposes of KRS 304.37-570, 304.37-575, and 304.37-580, "stock offering" shall  
 6 not mean:

7 (a) An offering of preferred stock which is not convertible or exchangeable into  
 8 common stock and which has no ordinary voting rights; or

9 (b) A transfer of stock between a mutual insurance holding company, an  
 10 insurance company subsidiary of a mutual holding company, and an insurance  
 11 company subsidiary of an intermediate holding company subsidiary to a  
 12 mutual holding company.

13 ➔ Section 1487. KRS 304.37-505 is amended to read as follows:

14 (1) A domestic mutual insurance company, upon approval of the  
 15 commissioner~~{executive-director}~~, may reorganize by forming an insurance holding  
 16 company based upon a mutual plan and continuing the corporate existence of the  
 17 reorganizing insurance company as a stock insurance company. The  
 18 commissioner~~{executive-director}~~, after a public hearing conducted in accordance  
 19 with KRS Chapter 13B, if satisfied that the interests of the policyholders are  
 20 properly protected and that the plan of reorganization is fair and equitable to the  
 21 policyholders, may approve the proposed plan of reorganization and may require as  
 22 a condition of approval modification of the proposed plan of reorganization as the  
 23 commissioner~~{executive-director}~~ finds necessary for the protection of the  
 24 policyholders' interests. A reorganization under this section is subject to KRS  
 25 304.37-120(1), (2), (3), (6), and (7). The commissioner~~{executive-director}~~ shall  
 26 retain jurisdiction over a mutual insurance holding company organized under this  
 27 section to assure that policyholder interests are protected.

1 (2) All of the initial shares of the capital stock of the reorganized insurance company  
2 shall be issued to the mutual insurance holding company. The membership interests  
3 of the policyholders of the reorganized insurance company shall become  
4 membership interests in the mutual insurance holding company. Policyholders of  
5 the reorganized insurance company shall be members of the mutual insurance  
6 holding company in accordance with the articles of incorporation and bylaws of the  
7 mutual insurance holding company. The mutual insurance holding company shall at  
8 all times own a majority of the voting shares of the capital stock of the reorganized  
9 insurance company.

10 (3) A domestic mutual insurance company, upon the approval of the  
11 commissioner~~executive director~~, may reorganize by merging its policyholders'  
12 membership interests into a mutual insurance holding company formed under this  
13 section and continuing the corporate existence of the reorganizing insurance  
14 company as a stock insurance company subsidiary of the mutual insurance holding  
15 company. The commissioner~~executive director~~, after a public hearing conducted  
16 in accordance with KRS Chapter 13B, if satisfied that the interests of the  
17 policyholders are properly protected and that the merger is fair and equitable to the  
18 policyholders, may approve the proposed merger and may require as a condition of  
19 approval modification of the proposed merger as the commissioner~~executive~~  
20 ~~director~~ finds necessary for the protection of the policyholders' interests. A merger  
21 under this section is subject to KRS 304.37-120(1), (2), (3), (6), and (7). The  
22 commissioner~~executive director~~ shall retain jurisdiction over a mutual insurance  
23 holding company organized under this section to assure that policyholder interests  
24 are protected.

25 (4) A merger of policyholders' membership interests in a mutual insurance company  
26 into a mutual insurance holding company shall be deemed to be a merger of the  
27 insurance companies under Subtitle 37 of KRS Chapter 304.

➔Section 1488. KRS 304.37-510 is amended to read as follows:

(1) A foreign mutual insurance company may reorganize upon the approval of the commissioner~~[executive director]~~ and in compliance with the requirement of any law or regulation which is applicable to the foreign mutual insurance company by merging its policyholders' membership interests into a mutual insurance holding company formed under KRS 304.37-505 and continuing the corporate existence of the reorganizing foreign mutual insurance company as a foreign stock insurance company subsidiary of the mutual insurance holding company. The commissioner~~[executive director]~~, after a public hearing as provided in KRS 304.37-120(4)(b), may approve the proposed merger. A merger under this section is subject to KRS 304. 37-120(1), (2), (3), (6), and (7).

(2) The reorganizing foreign mutual insurance company may remain a foreign company after the merger and may be admitted to do business in this state. A foreign mutual insurance company which is a party to the merger may at the same time redomesticate in this state by complying with the applicable requirements of this state and its state of domicile. The provisions of KRS 304.37-120 shall apply to a merger authorized under this section.

➔Section 1489. KRS 304.37-515 is amended to read as follows:

A mutual insurance holding company resulting from the reorganization of a domestic mutual insurance company organized under KRS Chapter 271B shall be incorporated under KRS Chapter 271B. The articles of incorporation and any amendments to the articles of the mutual insurance holding company shall be subject to approval of the commissioner~~[executive director]~~ and the Attorney General in the same manner as those of an insurance company.

➔Section 1490. KRS 304.37-520 is amended to read as follows:

A mutual insurance holding company is deemed to be an insurer subject to Subtitle 33 of this chapter and shall automatically be a party to any proceeding under Subtitle 33 of this



chapter involving an insurance company which, as a result of a reorganization under KRS 304.37-505, is a subsidiary of the mutual insurance company. In any proceeding under Subtitle 33 of this chapter involving the reorganized insurance company, the assets of the mutual insurance holding company are deemed to be assets of the estate of the reorganized insurance company for purposes of satisfying the claims of the recognized insurance company's policyholders. A mutual insurance holding company shall not dissolve or liquidate without the approval of the commissioner~~executive director~~ or as ordered by the court under Subtitle 33 of this chapter.

→ Section 1491. KRS 304.37-540 is amended to read as follows:

(1) In addition to any other items required to be filed with the department~~office~~ under this chapter, each mutual insurance holding company shall supply to the Department~~Office~~ of Insurance, by March 1 of each year, an annual statement consisting of the following:

- (a) An income statement;
- (b) A balance sheet;
- (c) A cash flow statement;
- (d) Complete information on the status of any closed block of business formed as a part of a plan or reorganization;
- (e) An investment plan covering all assets; and
- (f) A statement disclosing any intention to pledge, borrow against, alienate, hypothecate, or in any way encumber the assets of the mutual insurance holding company.

(2) The aggregate pledges and encumbrances of a mutual holding company's assets shall not affect more than forty-nine percent (49%) of the company's stock in any subsidiary insurance holding company or subsidiary insurance company that resulted from a reorganization or merger.

(3) At least fifty percent (50%) of the generally accepted accounting practices net worth

1 of a mutual insurance holding company shall be invested in insurance company  
2 subsidiaries.

3 ➔Section 1492. KRS 304.37-545 is amended to read as follows:

4 No policyholder who is a member of a mutual insurance holding company shall receive  
5 because of a membership interest any payment of a policy credit, dividend, or other  
6 distribution unless the payment has been approved by the commissioner~~[executive~~  
7 ~~director]~~. The commissioner~~[executive-director]~~, after a public hearing, if satisfied the  
8 proposed payment is fair and equitable to policyholders who are members, may approve  
9 the proposed payment and may require as a condition of approval modification of the  
10 proposed payment as the commissioner~~[executive-director]~~ finds necessary for the  
11 protection of policyholders.

12 ➔Section 1493. KRS 304.37-550 is amended to read as follows:

13 The reorganizing or merging insurer shall file with the commissioner~~[executive-director]~~  
14 an application requesting approval of the proposed reorganization or merger. The  
15 application shall include the following:

- 16 (1) A Form A filing as described in KRS 304.37-120 and the administrative regulations  
17 promulgated thereunder;
- 18 (2) A plan of reorganization as described in KRS 304.37-555;
- 19 (3) A plan to obtain the approval by a majority of two-thirds (2/3) of the participating  
20 policyholders in accordance with the applicant's articles of incorporation and  
21 bylaws. Policyholders must be provided with sufficient information to evaluate the  
22 merits of the proposed transaction, including a description of the purpose of the  
23 transaction, risks associated with the transaction, and alternatives considered.  
24 Policyholders shall be given not less than twenty (20) days' notice of any vote on  
25 approval of the reorganization;
- 26 (4) A copy of the mutual insurance holding company's proposed articles of  
27 incorporation and bylaws specifying all membership rights;

- 1 (5) The names, addresses, and occupational information of all corporate officers and
- 2 members of the initial mutual insurance holding company board of directors;
- 3 (6) Information sufficient to demonstrate that the financial condition of the applicant
- 4 will not be diminished upon reorganization;
- 5 (7) A copy of the proposed articles of incorporation and bylaws for any insurance
- 6 company subsidiary or intermediate holding company subsidiary;
- 7 (8) An index demonstrating where in the application information supplied in
- 8 compliance with each of the foregoing provisions is found; and
- 9 (9) Any other information requested by the commissioner~~executive director~~ at any
- 10 time during the proceedings.

11 ➔Section 1494. KRS 304.37-555 is amended to read as follows:

12 The reorganizing or merging insurer shall file a plan of reorganization, approved by the  
 13 affirmative vote of a majority of its board of directors, for review and approval by the  
 14 commissioner~~executive director~~. The plan shall provide the following:

- 15 (1) Establishing a mutual insurance holding company with at least one (1) stock
- 16 insurance company subsidiary or one (1) wholly owned intermediate holding
- 17 company with a stock insurance subsidiary, the shares of which shall be held
- 18 exclusively by the wholly owned intermediate holding company;
- 19 (2) Protecting the immediate and long term interests of existing policyholders;
- 20 (3) Ensuring immediate membership in the mutual insurance holding company of all
- 21 existing policyholders of the reorganizing domestic mutual insurance company;
- 22 (4) Providing for membership interest of future policyholders;
- 23 (5) Describing the number of members of the board of directors of the mutual insurance
- 24 holding company required to be policyholders;
- 25 (6) Demonstrating that, in the event of proceedings under Subtitle 33 of KRS Chapter
- 26 304 involving a stock insurance company subsidiary of the mutual insurance
- 27 holding company which resulted from the reorganization of a domestic mutual

- 1 insurance company, the assets of the mutual insurance holding company will be  
 2 available to satisfy the policyholder obligations of the stock insurance company;
- 3 (7) Describing how any accumulation or prospective accumulation of earnings by the  
 4 mutual insurance holding company, which is or would be in excess of that  
 5 determined by the board of directors of the mutual insurance holding company to be  
 6 necessary, shall inure to the exclusive benefit of the policyholders of its insurance  
 7 company subsidiaries who are members;
- 8 (8) Describing the nature and content of the annual report and financial statement to be  
 9 sent to each member;
- 10 (9) Describing the applicant's plan for a stock offering in accordance with the  
 11 provisions of KRS 304.37-570; and
- 12 (10) Describing other relevant matters the applicant deems appropriate.

13 ➔Section 1495. KRS 304.37-560 is amended to read as follows:

14 The application and plan of reorganization submitted to the commissioner~~executive~~  
 15 ~~director~~ shall demonstrate that:

- 16 (1) Policyholder interests are properly preserved and protected;
- 17 (2) The plan is fair and equitable to policyholders; and
- 18 (3) The financial condition of the applicant will not be diminished.

19 ➔Section 1496. KRS 304.37-565 is amended to read as follows:

- 20 (1) A public hearing required by KRS 304.37-505 and 304.37-510 shall be conducted  
 21 as directed in Subtitle 2 of this chapter and KRS Chapter 13B.
- 22 (2) In addition to any notice required by this chapter and KRS Chapter 13B, the  
 23 department~~office~~ shall supplement any notice by newspaper publication and  
 24 broadcast announcements, in accordance with KRS Chapter 424.
- 25 (3) The commissioner~~executive director~~ may retain at the applicant's expense any  
 26 attorneys, actuaries, accountants, investment bankers, or other experts not otherwise  
 27 a part of the commissioner's~~executive director's~~ staff that may be necessary to